



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Landlord's Application: MNSD; MND; FF

Tenants' Application: MNSD; MNDC; FF; O

### **Introduction**

This matter was convened on April 1, 2015, and was scheduled to hear the Landlord's application for a monetary award for damages; to apply the security deposit in partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenants.

During the course of the Hearing on April 1, 2015, I adjourned the Landlord's Application, to be heard together with the Tenants' Application on June 3, 2015. The Tenants applied for compensation for damage or loss under the Act, regulation or tenancy agreement; for return of the security deposit; and to recover the cost of the filing fee from the Landlord.

An Interim Decision was provided on April 7, 2015, which included an Order that the Landlord serve the Tenants with his rebuttal evidence to the Tenants' Application by May 25, 2015. The April 7, 2015, Interim Decision should be read in conjunction with this Interim Decision.

On June 3, 2015, it was determined that the Landlord served the Tenants with her rebuttal evidence. The Landlord's rebuttal evidence was taped on the Tenants' door on May 27, 2015.

On June 3, 2015, both parties gave submissions and affirmed testimony with respect to the Landlord's Application. The time scheduled for the Hearing ran out before the Tenants' Application could be heard. I adjourned the matter to August 18, 2015, at 9:30 a.m. for the purpose of hearing the Tenants' Application.

The Residential Tenancy Branch provided both parties with Notices of the Hearing scheduled for August 18, 2015. The Tenants did not sign into the Hearing on August 18, 2015, which remained open for 12 minutes. Therefore, I find that the Tenants have abandoned their Application and I dismiss their application without leave to reapply.

This Decision contains the relevant background, evidence and analysis with respect to the Landlord's Application only.

### **Issues to be Decided**

- Is the Landlord entitled to a monetary award for loss of revenue and unpaid utility bills; compensation for damages to the rental unit; and to apply the security deposit towards her monetary award?

### **Background and Evidence**

A copy of the tenancy agreement was provided in evidence. This tenancy began on May 11, 2014. The tenancy agreement is a two year lease, ending May 11, 2016. Monthly rent was \$1,400.00, due on the first day of each month. Rent did not include utilities. The Tenants paid a security deposit at the beginning of the tenancy, in the amount of \$700.00. The Landlord is holding the security deposit.

A move-in Condition Inspection Report was completed on May 12, 2014, a copy of which was provided in evidence.

### **The Landlord's evidence:**

The Landlord's evidence is that:

- The Tenants moved out of the rental unit, without any notice, at the end of December, 2014.
- The Tenants did not pay their utility bills and the City disconnected their utilities.
- The Tenants wrote all over the walls and damaged the rental unit.
- The Tenants' rent cheque for January, 2015, bounced.

The Landlord's agent DE testified that she was present at the rental unit at the end of the tenancy. She stated that there was garbage throughout the rental unit; writing on the walls; holes in the drywall; water leaking from the pipes; and the shower head was missing.

The Landlord seeks a monetary award, calculated as follows:

Unpaid utilities	\$1,182.65
Cost of removing and replacing drywall; filling holes in walls; cost of primer to cover indelible ink; painting; removal of all garbage and cleaning rental unit	\$3,667.24
Loss of revenue for January, 2015	<u>\$1,400.00</u>
TOTAL claim	\$6,249.89

The Landlord provided copies of invoices for the damages claimed, a copy of the utility bill from the City; and a copy of the Tenants' returned cheque dated January 1, 2015.

### **The Tenant's evidence:**

The Tenants acknowledged that they did not pay utilities when they were due.

The Tenants stated that the pipes froze on a Saturday at the end of November, 2014, and that the holes in the walls were from the Tenants trying to access the pipes stop the water. They testified that the Landlord was away at the time and that the Landlord told them he would send "George" to fix it on "Monday". The Tenants acknowledged writing on the walls, and stated that there were dog fights in the rental unit prior to their tenancy.

The Tenants testified that the rental unit was unsafe, so they moved out.

### **Analysis**

Section 67 of the Act states that if damage or loss results from a party not complying with the Act, regulations or tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

This is the Landlord's claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish her claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenants pay for the loss requires the Landlord to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenants in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed Section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 37 of the Act requires a tenant to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear at the end of a tenancy.

Based on the evidence provided, I find that the Tenants did not comply with Section 37 of the Act and that the Landlord suffered a loss as a result of the Tenants' non-compliance. The invoices confirm the amount that the Landlord paid to repair the damages and pay the Tenants' utility bill. This portion of the Landlord's application is granted.

I find that the Tenants breached the tenancy agreement by ending the tenancy before the end of the term. I find that the Tenants had no right under the Act to end the tenancy early and I find that the Landlord suffered a loss of revenue as a result of the Tenants' breach of the tenancy agreement. I award the Landlord her loss of revenue for the month of January, 2015.

Pursuant to the provisions of Section 72 of the Act, the Landlord may apply the security deposit towards her monetary award.

The Landlord's Application had merit and I find that she is entitled to recover the cost of the filing fee from the Tenants.

The Landlord is hereby provided with a Monetary Order, calculated as follows:

Monetary award	\$6,249.89
Recovery of filing fee	\$50.00
Less set-off of security deposit	<u>-\$700.00</u>
	\$5,599.89

### **Conclusion**

The Tenants' application is **dismissed without leave to reapply**.

The Landlord is hereby provided with a Monetary Order in the amount of **\$5,599.89** for service upon the Tenants. This Order may be filed in the Provincial Court of British Columbia (Small Claims Court) and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 25, 2015

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Residential Tenancy Branch

