



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MNR, MND, MNSD & MNDC

### Introduction

A hearing was conducted by conference call in the presence of the applicant and in the absence of the respondent although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Tenant by mailing, by registered mail to where the tenant resides on May 1, 2015. A search of the Canada Post tracking service indicates the package was successfully delivered to the tenant on May 6, 2015. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

### Background and Evidence

The parties entered into a tenancy agreement that provided that the tenancy would start on October 1, 2014. The tenancy agreement provided that the tenant(s) would pay rent of \$2695 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$1347.50 at the start of the tenancy.

There was a dispute between the landlord and the tenant about the tenant denying access to the landlord's contractors. A hearing was held on March 12, 2015 and the arbitrator rendered his decision on March 23, 2015 granting the landlord an Order for Possession effective March 31, 2015. The tenant's application for review was dismissed.

The tenant failed to leave the rental unit on March 31, 2015. Eventually the landlord obtained a Writ of Possession and the bailiff was hired. The tenant vacated the rental unit on April 15, 2015.

#### Monetary Order and Cost of Filing fee

The landlord has made a number of claims relating to losses caused by the tenant's failure to leave. Some of the claims were awarded in the previous arbitration. I have no jurisdiction to make a new order with respect to those items. Other claims involve postal charges relating to the cost of litigation in the previous application. The only jurisdiction I have relating to the cost of litigation is the cost of the filing fee in these proceedings. With respect to each of the landlord's claims I find as follows:

- a. I dismissed the landlord's claim of \$50 for the cost of the filing fee of the previous arbitration as that has already been awarded.
- b. I dismissed the landlord's claim of \$30 for Federal express delivery as that relates to a cost of litigation related to the previous hearing.
- c. I dismissed the landlord's claim of \$10.50 for the registered mail cost of mailing the Order for Possession as that is a cost related to the litigation which I do not have jurisdiction to award.
- d. The landlord attempted to return the tenant's post dated cheques by registered mail. I determined the landlord is entitled to the \$10.50 charge even though the tenant did not pick up his registered mail.
- e. I determined the landlord is entitled to \$120 for the cost of the Supreme Court of British Columbia filing fee to obtain a Writ of Possession as the tenant refused to vacate after receiving the Order for Possession.

- f. I determined the landlord is entitled to \$10.34 for the Express post mailing of information and photos to the Bailiff.
- g. I determined the landlord is entitled to \$360.78 for the cost of the Bailiff's services.
- h. I determined the landlord is entitled to \$7.50 for his bank charge for the bank draft paid to the Bailiff.
- i. I determined the landlord is entitled to \$157.50 for the cost of advertising as the tenant was acting reasonably to lessen his loss by advertising.
- j. The Order for Possession provided that the tenant was to give up possession of the rental unit by March 31, 2015. The tenant over-held and did not vacate until required to do so by the Bailiff on April 15, 2015. The landlord cashed the tenant's cheque for the rent for April on a "use and occupation basis." I dismissed the landlord's claim of \$1347.50 for the balance of the rent for April as the landlord has already received the benefit of April's rent.
- k. I determined the landlord is entitled to \$2695 for loss of rent for May. The tenant failed to vacate in accordance with the Order for Possession. Further, the landlord and other her permitted on the property actively mislead prospective tenants as to the condition of the rental unit thereby hindering the landlord's efforts to find a new tenant. It was impossible for the landlord to be certain when the tenant would vacate and thus it was not possible to determine when he could re-rent the rental unit. The landlord was not able to re-rent the rental unit until the middle of May with possession set for June 1, 2015 despite sufficiently attempting to advertise etc.
- l. I dismissed the claim of \$10.50 for the cost of a registered letter containing the Application containing the Application for Dispute Resolution as that relates to a cost of litigation which I do not have jurisdiction to award.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$3361.62 plus the \$50 filing fee (reduced to reflect the limited success of the landlord for a total of \$3411.62.

Security Deposit

I determined the security deposit plus interest totals the sum of \$1347.50. I determined the landlord is entitled to retain this sum. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$2064.12

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: October 06, 2015

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Residential Tenancy Branch

