



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

**MNDC, MNR, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid rent and damage to the rental unit, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on October 8, 2015 tenant M.W. was served a copy of the Application for Dispute Resolution and Notice of Hearing and evidence by a co-worker of the tenants', known to the landlord. The landlord called that person into the hearing.

S.C. entered the hearing and was affirmed. S.C. testified that she did recall giving the tenant an envelope that the landlord had asked her to deliver to M.W. S.C. works at the same business that the tenant worked, at the time. S.C. could only say that the envelope was given some time in 2015; she could not recall the date. S.C. said she understood that the envelope contained papers related to the tenancy but was not aware of the contents and did not realize she was considered to have served M.W.

The landlord said that during the week she had given the envelope to S.C., for delivery, she went to the place of employment and another employee confirmed that S.C. had given the papers to M.W. the day prior; October 8, 2015.

Section 71(2) of the Act provides:

*(2) In addition to the authority under subsection (1), the director may make any of the following orders:*

*(a) that a document must be served in a manner the director considers necessary, despite sections 88 [how to give or serve documents generally] and 89 [special rules for certain documents];*

*(b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;*

*(c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.*

From the evidence before me I find that tenant M.W. has been sufficiently served with the hearing documents. I have accepted the landlords affirmed testimony that she gave S.C. the hearing documents and evidence, in an envelope, for delivery to the tenant. I find that the tenant was given that envelope, at the very latest, by December 31, 2015. Even though it is likely the tenant received the documents on October 8, 2015, I have applied the latest possible date of service, based on the evidence before me. The tenant would then have had ample opportunity to respond to the claim and attend the hearing. The tenant did not attend the hearing.

The landlord said that the hearing documents and evidence was also sent to the tenants via registered mail on October 9, 2015. Both tenant names were on the envelope. A Canada Post tracking number and receipt was supplied as evidence of service. That mail was sent to the written forward address supplied on the August 10, 2015 move-out inspection report submitted as evidence. The mail was returned to the landlord, marked as "moved/unknown."

Therefore, as tenant M.W. has been personally served I find that tenant J.C. is deemed served effective October 14, 2015, pursuant to section 90 of the Act. The tenants had provided the forwarding address and the landlord utilized that address within a reasonable period of time. Tenant J.C. did not attend the hearing.

#### Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$725.00 for unpaid rent?

Is the landlord entitled to compensation in the sum of \$526.13 for replacement off a broken window?

#### Background and Evidence

The tenancy commenced on February 1, 2015. Rent was \$725.00 due on the or before the first day of each month. The tenants paid a security deposit in the sum of \$363.00. A copy of the tenancy agreement was supplied as evidence.

The landlord completed a move-in condition inspection report. A copy of the report, signed by the parties, was supplied as evidence.

The landlord issued a one month Notice to end tenancy for cause that had an effective date of September 1, 2015. The Notice was served to the tenants who did not dispute the Notice. The tenants vacated on August 10, 2015 without paying August 2015 rent owed.

A move-out condition inspection report was completed on August 10, 2015 and a copy was supplied as evidence. The report was signed by the tenants, who agreed the landlord could retain the security deposit for the cost of window replacement.

The landlord said the tenants broke the interior pane of glass on the picture window. The damage was recorded on the move-out inspection report and the tenants signed, acknowledging that damage and agreed the deposit could be retained against the damage. A September 1, 2015 invoice for purchase and installation of a sealed unit in the sum of \$1,052.27 was submitted as evidence. The tenants paid one-half of the cost of the window. The landlord has claimed the balance owed for the window.

The tenants vacated the rental unit on August 10, 2015, prior to the effective date of the one month Notice ending tenancy. The tenants did not pay the rent due on August 1, 2015 and did not attend the hearing to oppose the claim.

The application included a total claim of \$1,165.14. The details of dispute section of the application set out a claim totaling \$1,251.13. The landlord deducted the value of the deposit on a portion of the application.

### Analysis

As the tenants failed to pay the total cost of the window and failed to attend the hearing to oppose the claim I find that the landlord is entitled to the sum claim for window replacement in the sum of \$526.13. Pursuant to Section 72(2) of the Act I find that the landlord is entitled to retain the security deposit in the sum of \$363.0 in partial satisfaction of this claim.

I find, pursuant to section 44(f) of the Act that the tenancy ended effective August 10, 2015, the date the tenants' vacated the rental unit.

Based on the evidence before me and the unopposed claim, I find that the tenants failed to pay rent owed to August 10, 2015 in the sum of \$233.90 and that the landlord is entitled to compensation in that amount.

Pursuant to section 62(3) of the Act, I find that the landlord is entitled to compensation in the sum of \$491.10 for loss of rent revenue to September 1, 2015. The tenants were not required to vacate until September 1, 2015 and did not pay rent for August 2015. The landlord expected the tenants to vacate on the effective date of the Notice, not mid-month.

Therefore, the landlord is entitled to compensation totaling \$1,251.13.

As the landlord's application has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$50.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenants' security deposit in the amount of \$363.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$938.13. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

### Conclusion

The landlord is entitled to compensation for damage, unpaid rent and loss of rent revenue.

The landlord is entitled to filing fee costs.

The landlord is entitled to retain the tenants' security deposit in the amount of \$363.00 in partial satisfaction of the monetary claim.

This decision is final and binding and 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: April 21, 2016

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Residential Tenancy Branch