



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REMAX MANAGEMENT SOLUTIONS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes OPR, MNR, MND, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on September 16, 2016. The landlord amended his application on October 20, 2016 and served these documents to the tenant by registered mail on that date. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord's agent (the landlord) appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

At the outset of the hearing the landlord advised that the tenant is no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?
- Is the landlord entitled to a Monetary Order for damage to the unit?
- Is the landlord permitted to keep all or part of the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The landlord testified that this tenancy started on December 01, 2015 for a fixed term that was due to end on February 28, 2017. The tenancy ended on or about August 15, 2016 when the tenant abandoned the rental unit without notice. Rent for this unit was \$750.00 a month due on the 1<sup>st</sup> of each month in advance. The tenant paid a security deposit of \$375.00 on November 13, 2015. A copy of the tenancy agreement has been provided in documentary evidence.

The landlord testified that the tenant failed to pay rent for August, 2016 of \$750.00. The landlord contacted the tenant and the tenant said she would pay the rent and wanted to continue with the tenancy. When the landlord went to the unit he found the door unlocked and a neighbour informed the landlord that the tenant had vacated the unit around the middle of August.

The landlord testified that they re-rented the unit to a new tenant on September 15, 2016 and has provided a copy of that tenancy agreement in documentary evidence. The landlord therefore seeks to recover unpaid rent for August, 2016 of \$750.00 and a loss of rental income for the first half of September of \$375.00.

The landlord testified that the tenant attended a move in condition inspection at the start of the tenancy but failed to attend the move out inspection after several opportunities to attend were provided. The landlord completed the move out inspection in the tenant's absence and copies of these reports have been provided in documentary evidence. The landlord contacted the tenant and the tenant provided a forwarding address in writing to the landlord on either September 05 or September 07, 2016.

The landlord testified that the tenant had made no effort to clean this studio unit. The landlord sent in a cleaner at the end of August who spent four hours cleaning. The landlord referred to their photographic evidence showing the condition of the unit and the move out inspection report confirms the tenant did not leave the rental unit clean. The landlord seeks to recover the cost of the cleaning of \$157.50 and has provided the cleaners invoice in documentary evidence.

The landlord testified that the unit had a Murphy bed. At the start of the tenancy the mattress to this bed was replaced with a new mattress. At the end of the tenancy the mattress was left dirty and it smelt atrocious. The landlord had to replace this mattress for the new tenants and seeks to recover the cost of this of \$313.59. The landlord has provided the receipt and photographs of the mattress in documentary evidence.

The landlord testified that there are two types of flooring in the unit, laminate and tile. There is a transition between the flooring which had been ripped up and let dirty. The walls, baseboards and ceiling also required patching and repainting due to scuffs, marks and dents. The landlord referred to the move out report, the photographs and the invoice from the maintenance company who made these repairs. The landlord seeks to recover \$279.32 for this work.

The landlord verbally requested a further amendment to his application to include a Monetary Order for liquidated damages as the tenant ended the tenancy before the end of the fixed term. The landlord referred to the tenancy agreement showing that a charge of \$625.00 will be applied for liquidated damages. The landlord testified that they omitted to include this on the application or the amended application.

The landlord seeks an Order to be permitted to keep the security deposit of \$375.00 in partial satisfaction of their claim and to recover the filing fee of \$100.00.

#### Analysis

The tenant did not appear at the hearing to dispute the landlord's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlord's undisputed evidence before me.

With regard to the landlord's claim for unpaid rent; I refer the parties to s. 26 of the *Act* which states:

*26. A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I am satisfied from the evidence before me that the tenant failed to pay rent for August, 2016 of **\$750.00**. Therefore I find the landlord has established a claim to recover this amount from the tenant.

With regard to the landlord's claim to recover a loss of rent for September, 2016 of \$375.00; this was a fixed term tenancy and as such the tenant is responsible for meeting the terms of the tenancy agreement up until the tenancy legal ends. As the tenant moved from the unit in August, 2016 and the agreement did not end until February 28, 2017 the tenant is responsible for the rent to either the end date of the agreement or up to the date the landlord was able to re-rent the unit. In this case the landlord re-rented the unit on September 15, 2016 and therefore I find the tenant is responsible for the rent from September 01 to September 15, 2016 of **\$375.00**.

With regard to the landlord's claim for damage to the unit; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

I am satisfied from the undisputed evidence presented that the tenant did not leave the rental unit reasonable clean, the tenant left the mattress to the Murphy bed unclean which resulted in the landlord having to replace it, and caused damage to a transition strip and the walls, baseboards and ceiling which went beyond normal wear and tear. Consequently I find in favor of the landlord's claim to recover cleaning costs of **\$157.50**; the cost of the new mattress of **\$313.59** and to repair the transition strip and patch and paint the unit of **\$279.32**.

The landlord requested that I consider his claim for a monetary order to recover liquidated damages. In the absence of a formal and proper application for that issue, I declined to hear or determine that issue, as to do so, in my view, would not be in keeping with the principles of natural justice as to the requisite process and notice regarding claims as the tenant has a right to know what the landlord has applied for in their application.

I Order the landlord to keep the tenant's security deposit of **\$375.00** pursuant to s. 38(4)(b) of the *Act*. This amount will be offset against the landlord's monetary award.

As the landlord's application has merit I find the landlord is entitled to recover the filing fee of **\$100.00** from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount pursuant to s. 67 and 72(1) of the *Act*:

Unpaid rent for August	\$750.00
Loss of rental income for September	\$375.00
Damages	\$750.41
Subtotal	\$1875.41
Filing fee	\$100.00
Less security deposit	(-\$375.00)

Total amount due to the landlord	\$1,600.41
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Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for \$1,600.41. The Order must be served on the respondent. Should the respondent fail to comply with the Order, the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: November 03, 2016

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Residential Tenancy Branch