



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW HEARING DECISION**

### **Dispute Codes:**

MNR MND MNDC-S FF

### **Introduction:**

This hearing was convened in response to a successful application for Review filed by the landlord who sought a new hearing on the ground they were unable to attend the hearing held on January 15, 2019.

The landlord attended this hearing however the tenant did not. The landlord stated they served the tenant with the new Notice of Review Hearing and a copy of the Review Consideration Decision granting a new hearing by registered mail to the tenant's forwarding address, for which they provided proof of mail registration. The landlord's evidence indicated the tenant failed to pick up the registered mail and it was returned to the landlord. I am further satisfied by the landlord's testimony that they served the tenant all of the evidence submitted to this proceeding in accordance with the Act.

The hearing proceeded on the merit of the landlord's claim.

### **Issue(s) to be Decided**

Should the original Decision and Order of this matter be confirmed, varied or set aside?  
Is the landlord entitled to the monetary amount claimed?

### **Background and Evidence**

The undisputed testimony and relevant evidence of the landlord is as follows. The contractual tenancy started as a 1 year fixed term tenancy agreement June 15, 2018, albeit the tenant was permitted to occupy the unit 5 days earlier. The tenancy ended earlier than contractually agreed after 2.5 months August 31, 2018. The landlord

subsequently filed for dispute resolution September 12, 2018 for primarily loss of revenue upon receiving the tenant's forwarding address.

During the agreement rent payable under the tenancy agreement was \$2800.00 per month, excluding utilities, due in advance on the 1st day of the month. At the outset of the tenancy the landlord collected a security deposit of \$1400.00 which they retain in trust.

At the start and end of the tenancy *the landlord* conducted condition inspections without the tenant. The *move in* inspection was conducted solely by the landlord on June 10, 2018 with the Condition Inspection Report (CIR) stating, "Tenant not available for inspection". Despite the landlord providing the tenant with a *Notice of Final Opportunity to Conduct a Condition Inspection* on August 31, 2019 for the *move out* inspection the tenant failed to attend the inspection. The landlord conducted the inspection on their own and forwarded the results to the tenant.

The landlord submitted evidence that on August 14, 2018 they received a *written* notice from the tenant that they were vacating August 31, 2018 due to what the tenant termed as "frustration", however did not provide valid reason for this legal doctrine. The landlord testified they immediately began attending to requirements for ending the tenancy and mitigating potential losses in as organized a process as possible including advertising for a new tenant which they were unable to do for September 01, 2018. However, the landlord was successful in securing a new tenancy for October 01, 2018, albeit at a reduced rent of \$2600.00 per month. The landlord seeks loss of revenue for September 2018 in the monthly payable amount of \$2800.00 and requested loss of revenue of \$200.00 per month for the relevant balance of the fixed term, to the hearing date (October 2018 to March 2019 = \$1200.00).

The landlord claims that the tenant left the rental unit unclean for which they provided receipts to clean the unit, inclusive of carpet cleaning, in the sum of \$919.00.

The landlord further claims the tenant did not pay a BC Hydro utility bill obligation in the amount of \$210.00 which the landlord claims was subsequently satisfied by the incoming tenant. The landlord provided a bank statement page of the incoming tenant (EH) indicating a payment of \$210.00 to "BC Hydro 10630109" made September 27, 2018, prior to occupying the rental unit.

The landlord claims \$266.11 for a replacement door lock after the tenant vacated and failed to return the keys to the unit by 8:00 p.m. on the move out date. The landlord claims they were left no choice but to attend to the locks as they otherwise had no other way to secure the residential unit. The landlord provided an invoice in support of the lock replacement.

Lastly, the landlord claims \$350.00 for their costs to re-rent the unit. The landlord confirmed that the tenancy agreement did not contain a *liquidated damages* clause allowing the landlord to claim such costs.

### **Analysis**

*The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).*

I find that the tenant did not provide the landlord with written Notice they were ending the tenancy until 2 weeks before the end of the rental period, in breach of **Section 45** of the Act. I am satisfied by the landlord's evidence they consequently attempted in short order to re-rent the unit for September 01, 2018 without success. None the less, I accept the landlord's testimony they were able to re-rent the unit, to mitigate mounting losses, for October 01, 2018 at a reduced rent of \$2600.00 per month.

I additionally find that a tenant who signs a fixed term tenancy agreement is responsible for the rent to the end of the fixed term. The landlord's claim is subject to their statutory duty pursuant to **Section 7(2)** of the Act to do whatever is reasonable to minimize the damage or loss. I find that the landlord has provided sufficient evidence they took reasonable steps to minimize the loss in this situation.

It must be noted that an applicant is not entitled to prospective losses. As a result of all the above I grant the landlord one month's rent for September 2018 in the amount of \$2800.00 and \$200.00 for each of the following 6 months in the sum of \$1200.00, for a total of **\$4000.00** representing loss of revenue.

I find that the landlord did not conduct a *move in* inspection with the tenant, in concert with the requirements of **Section 35** of the Act. As a result, I find that the landlord cannot rely on either of their condition inspection reports to establish the condition of the rental unit at the outset of the tenancy. But moreover, the landlord cannot rely on their CIR to establish that, after 2.5 months of occupancy, the condition of the rental unit reflects that which solely the tenant is responsible. I am not satisfied by the evidence

that the claimed uncleanliness at the end of the tenancy resulted from solely the outgoing tenant's conduct or neglect in this matter. As a result, I **dismiss** the landlord's claims related to cleaning the rental unit, without leave to reapply.

On a balance of probabilities, I accept the landlord's evidence respecting the amount claimed for unpaid utilities. I find the landlord has provided sufficient evidence establishing that the amount claimed for unpaid BC Hydro utilities (\$210.00) was an amount owed by the respondent tenant. As a result, I grant the landlord the amount of **\$210.00**.

In the absence of a *liquidated damages* clause within the tenancy agreement I find the landlord is not entitled to claim costs associated with re-renting the unit, therefore I **dismiss** this portion of the landlord's claim, without leave to reapply.

I find that the landlord acted reasonably to secure their property in the absence of the tenant returning the rental unit access keys. As a result I grant the landlord their cost to replace the locks in the amount of **\$266.11**.

As the landlord was in part successful in their application they are entitled to recover their filing fee. The security deposit held by the landlord will be off-set from the award made herein.

*Calculation for Monetary Order*

Loss of revenue	\$4000.00
Unpaid utilities	\$210.00
Lock replacement	\$266.11
Filing Fee	\$100.00
<i>Less Security Deposit</i>	<i>-\$1400.00</i>
<b>Monetary Award to landlord</b>	<b>\$3176.11</b>

**I Order** that the original Monetary Order of this matter issued to the tenant ***dated January 15, 2019*** is **set aside**.

**I Order** the landlord may retain the tenant's security deposit of \$1400.00 in partial satisfaction of their award and **I grant** the landlord a Monetary Order for the balance of their award in the amount of **\$3176.11**. This Order must be served on the tenant and if

necessary may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

**Conclusion**

The original Hearing Decision and Order dated January 15, 2019 are set aside and are of no effect. The landlord's application is granted in the above terms.

**This Decision is final and binding.**

*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: March 26, 2019

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Residential Tenancy Branch