



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND, MNDC, MNSD, FF

### Introduction

This matter dealt with an application by the Landlords for a Monetary Order for unpaid rent, for compensation for loss or damage under the Act, regulations or tenancy agreement, for damage to the unit site or property, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on March 28, 2019. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

### Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Is there a loss or damage and if so how much?
4. Is the Landlord entitled to compensation for the loss or damage and if so how much?
5. Is the Landlord entitled to keep the Tenant's security deposit?

### Background and Evidence

This tenancy started on January 1, 2019 as a fixed term tenancy with an expiry date of June 30, 2019. Rent was \$1,200.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$600.00 on December 21, 2018. The Landlord said the Tenant moved out of the rental unit on March 3, 2019 without proper written notice to the Landlord. The Landlord said no condition inspection reports were completed for this tenancy. The Landlord said the Tenant left the unit and did not

communicate with the Landlord. The Landlord said they got the Tenant's forwarding address from the Tenant's parents.

The Landlord said they have new tenants as of May 15, 2019 after advertising the unit and showing it 4 times. The Landlord continue to say that the Tenant did not pay the rent of \$1,200.00 for March, April and the portion of May prior to the new tenancy beginning on May 15, 2019. The Landlord said as this was a fixed tenancy with an expiry date of June 30, 2019 the Tenant is responsible for the rent up to May 15, 2019 in the total amount of \$3,000.00.

Further the Landlord said the Tenant damaged the mattress, a dresser and the kitchen counter which they are claiming \$1,369.00 for. The Landlord said this claim is based on the purchase price of these items, but in actual fact their parents replaced the items at a cost of \$500.00 for the mattress, \$300.00 for the dresser and the counter has not been fixed as of yet. The Landlord said she does not have the receipts for these purchases.

The Landlord continued to say the Tenant left the unit in a mess and her mother spent 8 hours cleaning it and they hired a professional carpet cleaner to do the carpets as indicated in the tenancy agreement.

Further the Landlord said they have a clause for liquidated damages in the tenancy agreement. That clause says if the Tenant leaves the tenancy early the Tenant will pay the Landlord \$2,500.00. The Landlord said they spent \$60.00 on advertising the unit and approximately 4 hours showing the unit to potential tenants before renting the unit.

The Landlord also requested to recover the \$100.00 filing fee for the application.

The Landlord said in closing that they are new landlords and this has been a learning experience, but they have had real losses and she hopes to be successful in her claims.

### Analysis

Section 26 says 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.

Section 45 of the Act says a Tenant may end a fixed term tenancy not earlier than the date specified in the tenancy agreement and it must be with written notice at least one month prior to the date that rent is payable or with the agreement of the Landlord.

The Tenant did not give the Landlords proper notice to end the tenancy and the Tenant does not have the right under the Act to withhold part or all of the rent; therefore I find

the Tenant is responsible for the rent of \$1,200.00 for March 2019, \$1,200.00 for April 2019 and rent up to May 15, 2019 in the amount of \$600.00, which is the start date of the new tenancy. I find the Tenant owes the Landlord a total of \$3,000.00 for unpaid rent.

For a monetary claim for damage or loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

Further section 23 and 35 of the Act say that a landlord and tenant must do condition inspections to establish the condition of the rental unit at the start and the end of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start and the end of a tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit.

As the Landlord said she is unable to establish the condition of the rental unit at the start of the tenancy and there is no move out inspection report completed by the Landlord and the Tenant, I find that the Landlord has not established proof to what degree the Tenant damaged the rental unit. Consequently, I dismiss the Landlord's application for damages to the unit, site or property without leave to reapply.

I do find on the balance of probabilities that the Landlord incurred cleaning costs of \$300.00 to clean the unit and the carpets. As well I find that the liquidated damage clause in the tenancy agreement is punitive and therefore unenforceable. I accept the Landlord's testimony that they had advertising cost of \$60.00 and spent 4 hours sowing the unit at a cost of \$25.00 per hour for a total of \$60.00 plus \$100.00 = \$160.00. Pursuant to policy guideline # 4, I award this amount in lieu of the liquidated damages clause in the tenancy agreement.

As the Landlords have been partially successful in this matter, they are also entitled to recover from the Tenants the \$100.00 filing fee for this proceeding. I order the Landlords pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 3,000.00	
	Cleaning costs	\$ 300.00	
	Liquidated damages	\$ 160.00	
	Recover filing fee	\$ 100.00	
	Subtotal:		\$3, 560.00
Less:	Security Deposit	\$ 600.00	
	Subtotal:		\$ 600.00
	Balance Owing		\$ 2,960.00

### Conclusion

A Monetary Order in the amount of \$2,960.00 has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: June 03, 2019

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Residential Tenancy Branch