



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNR, MND, MNDC-S, FF

### **Introduction**

This hearing was convened in response to an application by the landlord for a Monetary Order under the *Residential Tenancy Act* (the Act) to recover loss of rent revenue and for damage and loss and inclusive of recovery of the filing fee associated with this application, and an order to retain the tenancy deposit in partial satisfaction of the overall monetary claim. During the hearing the landlord orally amended a portion of their claim in respect to unpaid rent by effectively withdrawing their claim for January 2019 rent in the amount of \$1300.00.

Only the landlord appeared in the conference call hearing. I accept the landlord's testimony and evidence that the tenant was served, with the application for dispute resolution and notice of hearing as well as the landlord's evidence in accordance with Section 89 of the *Residential Tenancy Act* (the Act). The landlord testified they served the tenant with the Notice of Hearing, all of their documents and evidence by *registered mail*, for which they provided receipts and tacking numbers. None the less the registered mail was returned as unclaimed. I accept that the tenant was served with the application and case against them along with the Notice of Hearing as prescribed by the Act; however, the tenant did not participate in the conference call hearing.

The landlord was given full opportunity to be heard, to present evidence and to make submissions. The hearing proceeded on the merits of the landlord's application and evidence. I have reviewed all oral, written and document evidence before me however only the evidence relevant to the issues in this matter is described in this Decision.

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

Is the landlord entitled to the monetary amounts claimed?

## **Background and Evidence**

The following is undisputed. I have benefit of the written tenancy agreement stating the tenancy began November 01, 2018 as a 1 year fixed term agreement ending in October 2019. The tenancy was ordered at an end by an Adjudicator's Decision and Order of possession dated February 02, 2019 and the tenant consequently vacated February 16, 2019.

Rent in the amount of \$2400.00 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant of \$1200.00 which the landlord retains in trust. The evidence is that the parties did not agree as to the administration of the deposits at the end of the tenancy. The landlord testified they attempted to schedule a move out condition inspection with the tenant however the tenant did not co-operate. The landlord testified they did not complete a condition inspection report in the absence of the tenant however did take some photo images of the rental unit flooring. The landlord testified that "several days" after they vacated the tenant returned with a few notes including their forwarding address.

The landlord makes the following monetary claims on application as provided in their Monetary Order Worksheet.

Unpaid Rent for February 2019	\$1300.00
Loss of rent revenue for March 2019	\$2400.00
Devaluation/depreciation for scratched flooring	\$500.00
New toilet and wax ring, caulking (unresolvable clogging)	\$249.57
Cleaning, 10 hours @\$20.00	\$200.00
Refuse disposal	\$15.00
Rental Advertising	\$16.70

The landlord claims that the tenant did not pay all of January or February 2019 rent, and as a result they were compelled to end the tenancy by way of the Direct Request process with a resulting order of possession and monetary order for January 2019 unpaid rent. The landlord advertised the rental unit on February 02, 2019 and again renewed the listing on February 24, 2019 however failed to obtain an acceptable new tenancy for March 2019, but finally did so for April 01, 2019. The landlord testified they advertised on- line and provided receipts for paid advertising on a popular on-line site.

The landlord provided photo images of the vinyl plank flooring of the unit depicting some noticeable scratches to the flooring. The landlord testified the flooring was new at the

outset of the 4 month tenancy but has not replaced the scratched flooring. The landlord's claim of \$500.00 is for the devalued or depreciated component of the scratched flooring. The landlord provided an invoice for the flooring dated June 2018 in the amount of \$2183.00.

The landlord claims that the 17 year old toilet of the rental unit was clogged by the tenant with an object which could not be cleared. They determined to replace the toilet after repeated attempts to remedy the clogged toilet, including removing and reinstalling it. The landlord is claiming the cost of a new toilet and the accompanying parts. The landlord is further claiming the cost to dispose of the old toilet.

The landlord claims the tenant left the rental unit unreasonably dirty and had to expend 10 hours to clean the unit for which they claim \$200.00. The landlord acknowledged they had not provided proof to support this portion of their claim.

### **Analysis**

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

It must be known that the landlord, as applicant, bears the burden of proving their monetary claims pursuant to the Act, on balance of probabilities.

On preponderance of the evidence before me, I find that I have not been presented with evidence that the landlord took steps to conduct a mutual *move out* condition inspection of the rental unit with the tenant. As a result, the landlord's right to claim against the deposit for *damage to the unit* was extinguished under the provisions contained in **Section 36** of the Act. None the less, despite this factor, the landlord retained a right under the Act to claim against the security deposit for unpaid rent or *for other than damage*. I find the landlord applied for dispute resolution on the 15<sup>th</sup> day after the tenant provided their forwarding address.

I find that the landlord has provided sufficient evidence to support their claim for unpaid February 2019 rent in the amount of **\$1300.00**.

I find that a tenant who signs a fixed term tenancy agreement is responsible for the rent to the end of the term; and, a landlord's claim for loss of revenue is subject to their statutory duty pursuant to **Section 7(2)** (see below) to do whatever is reasonable to minimize the damage or loss. In this situation I find that the landlord took reasonable steps in attempt to minimize the loss. Therefore, on the basis of the available evidence

I grant the landlord their claim for loss of revenue for March 2019 in the amount of the payable rent of **\$2400.00**.

**Section 7** of the Act provides as follows in respect to the remaining claims of the landlord for damages.

**7. Liability for not complying with this Act or a tenancy agreement**

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Effectively, the landlord must satisfy each component of the test below:

1. *Proof the loss exists*
2. *Proof the damage or loss occurred solely because of the actions or neglect of the Respondent in violation of the Act or an agreement*
3. *Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.*
4. *Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to minimize the loss or damage.*

I find the landlord has not submitted sufficient evidence of a loss incurred for cleaning the rental unit. As a result I must **dismiss** this portion of their claim.

While I accept the landlord's evidence that the vinyl plank flooring was scratched during the tenancy I find the landlord's claim of \$500.00, representing the flooring's devaluation by nearly 25% of the original flooring cost, as extravagant when considering the remaining useful life of the flooring. As a result I grant the landlord set compensation of **\$300.00** for this portion of their claim.

I accept the landlord's claim for a new toilet is reasonable. However, I find that **Residential Tenancy Policy Guideline #40 – Useful Life of Building Elements – Mechanical** - states the useful life for a toilet is 20 years. I have not been presented with evidence that the toilet of 2002 requires consideration of a superior or longer useful life

than suggested in the Policy Guideline, which I find takes a reasonable stance. **Section 7(2)** of the Act imposes on the landlord a duty to *reasonably mitigate or minimize their loss /claim*. Therefore, in respect to the landlord's claim for a replacing the 17 year old toilet I find that the landlord's entitlement is reduced 85% (17/20) and the resulting allowable compensation to the landlord is 15% or **\$37.45**.

I accept the landlord's claim for disposing of the old toilet and other castoffs in the amount of **\$15.00**.

I am further satisfied that the landlord's claim for advertising the rental unit was a result of the tenant's contravention of the Act and as a result I grant the landlord their cost of **\$16.70**.

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

Calculation for Monetary Order is as follows.

Unpaid Rent for February 2019	\$1300.00
Loss of rent revenue for March 2019	\$2400.00
Devaluation/depreciation for scratched flooring	\$300.00
New toilet and wax ring, caulking (unresolvable clogging)	\$37.45
Refuse disposal	\$15.00
Rental Advertising	\$16.70
Filing fee	\$100.00
Landlord's award / total	\$4169.15
<i>Less security deposit in trust</i>	<i>- \$1200.00</i>
<b>Monetary Order / landlord</b>	<b>\$2969.15</b>

### **Conclusion**

The landlord's application in part has been granted and the balance dismissed.

**I ORDER** the landlord may retain the security deposit of \$1200.00 in partial satisfaction of their award, and **I grant** the landlord a **Monetary Order** pursuant to Section 67 of the Act for the balance of the award in the amount of **\$2969.15**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**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: June 25, 2019

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Residential Tenancy Branch