



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      LANDLORD: MNDC, MND, MNSD, FF  
TENANT: MNSD, FF

### **Introduction**

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking a monetary order for compensation for damage to the unit site or property, for damage or loss under the Act, the regulations or the tenancy agreement, for lost rental income, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenant filed seeking a monetary order for the return of the Tenant's security deposit and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on June 21, 2019, in accordance with section 89 of the Act.

The Tenant did not attend the hearing therefore in accordance with the following the Tenant's application is dismissed without leave to reapply.

Residential Tenancy Branch Rules of Procedure, section 10.1, provides:

### ***10.1 Commencement of the dispute resolution proceeding***

*The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.*

In the absence of an appearance by the Tenant, the Tenant's application is abandoned and dismissed without leave to reapply.

### Issues to be Decided

Landlord:

1. Are there damages to the unit, site or property and if so how much?
2. Is the Landlord entitled to compensation for the damages and if so how much?
3. Are there damages or losses to the Landlord and if so how much?
4. Is the Landlord entitled to compensation for damage or loss and if so how much?
5. Is there unpaid rent and if so how much?
6. Is the Landlord entitled to unpaid rent and if so how much?
7. Is the Landlord entitled to retain the Tenant's security deposit?

### Background and Evidence

This tenancy started on August 1, 2018 as a fixed term tenancy for 1 year with an expiry date of July 31, 2019. Rent was \$2,800.00 per month payable on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$1,400.00 on July 24, 2018. A move in condition inspection report was completed on July 30, 2018 and a move out condition inspection report was completed with the Tenant on May 31, 2019 but the Landlord's agent said the Tenant refused to sign the report. The Landlord's agent said the Tenancy ended on May 31, 2019.

The Landlord's agent continued to say the Tenant moved out of the rental unit on May 31, 2019 without proper notice and before the fixed term of the tenancy agreement. As a result the Landlord is seeking \$2,800.00 for lost rental income for June 2019 as he was unable to find a new tenant until July 1, 2019.

In addition the Landlord's agent said the Tenant did not clean the unit and there was damage that had to be repaired. The Landlord's agent submitted paid receipts for house cleaning of \$320.00 and carpet cleaning of \$348.60 as the Tenant did not have the carpets professionally cleaned as stated in the tenancy agreement.

Further the Landlord's agent said the Landlord is seeking \$150.00 for his time and materials to make repairs to the kitchen cabinets, the base boards and drywall in the rental unit and \$750.00 for yard repairs. The Landlord's agent said the yard was over grown and the Landlord had to make many trips to the dump with garbage and yard debris. The Landlord's agent submitted photographic evidence and the move out report to support the condition of the rental unit when the Tenant moved out.

The Landlord's agent said the Landlord's claim is for \$4,368.60 plus the \$100.00 filing fee if the Landlord is successful.

As well the Landlord's agent said the Landlord is requesting to retain the Tenant's security deposit as partial payment of those amounts.

### 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 Landlord 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 until the end of the fixed term tenancy. As the Landlord found a new tenant for July 1, 2019; I find the Tenant is only responsible for the June 2019 rent of \$2,800.00.

Further the Landlord's agent provided photographs, evidence and testimony that the Landlord incurred \$150.00 in house repairs and \$750.00 in yard repairs. I accept the Landlord's agent's evidence and testimony and I award the Landlord \$900.00 in repairs to the rental unit.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the \$100.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the lost rental income. The Landlord will receive a monetary order for the balance owing as following:

	Loss rent:	\$ 2,800.00
	House cleaning	\$ 320.00
	Carpet cleaning	\$ 348.60
	House repairs	\$ 150.00
	Yard repairs	\$ 750.00
	Recover filing fee	\$ 100.00
	Subtotal:	\$ 4,468.60
Less:	Security Deposit	\$ 1,400.00
	Subtotal:	\$ 1,400.00
	Balance Owing	\$ 3,068.60

As the Tenant was unsuccessful in this matter I order the Tenant to bear the \$100.00 cost of the filing fee for his application that he has already paid.

Conclusion

A Monetary Order in the amount of \$3,068.60 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.

The Tenant's application is dismissed without leave to reapply.

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*.

September 24, 2019

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Residential Tenancy Branch