



# **Dispute Resolution Services**

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes:** MNR, MND, MNSD, FF

### **Introduction**

This application was brought by the landlord seeking a Monetary Order for damage to the rental unit and loss of rent after the tenants vacated early and without giving written notice. The landlord also seeks to recover the filing for this proceeding and authorization to retain the security deposit in set off.

Despite being served with the Notice of Hearing sent by registered mail on August 8, 2008, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, it proceeded in their absence.

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

This application requires a decision on whether and in what amount the landlord is entitled to a Monetary Order and whether the security deposit may be retained in set off against the balance.

### **Background and Evidence**

This tenancy began April 1, 2006 and, at its end, it was under a fixed term agreement to end on March 31, 2009. Rent was \$1,400 per month and the landlord holds a security deposit of \$700 paid April 1, 2006.

During the hearing, the landlord gave evidence that he had become aware that the tenants had vacated the rental unit in June 2008. However, he was advised by the tenants that they had vacated in March 2008, though rent was paid to June.

An exchange of emails submitted by the parties indicated that the tenants had suffered a financial crisis due to ill health and had returned to the United States.

The landlord stated that the property was put up for sale following the end of the tenancy and there is currently a conditional offer. He said that on regaining possession of the rental unit, he found the need for considerable repairs and cleaning which is claimed along with the loss of rent.

## **Analysis**

The landlord claims and I find as follows:

Loss of rent for July and August – (\$1,400 x 2 = \$2,800). Section 7(2) of the *Act* states that, “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.” As the landlord gave evidence that, after ascertaining the damages and reevaluating matters, he had decided to sell the rental unit rather than rent again. I find that, had the landlord done all in his power to mitigate his loss, he could have found a new tenant for August 1, 2008. Therefore, I allow the landlord one month's loss of rent of \$1,400 for July.

Cleaning and repairs - \$500. The landlord gave evidence that the rental unit required extensive cleaning and repairs to holes in the walls, some of which were as big as four inches in diameter. As I have no receipts for this work, I find that a figure of \$175 for cleaning and \$175 for repairs to the walls is more consistent with the standard claims for such work and I reduce this claim to \$350.

Garbage removal - \$210.84. This claim is supported by a receipt and is allowed in full.

Carpet cleaning - \$105.00. While the landlord eventually found that the carpets had to be replaced due to pet soiling, he attempted to mitigate by having the carpets professionally cleaned having found that the tenant's attempts were inadequate. This claim is supported by a receipt and is allowed in full.

Carpet and kitchen flooring - \$3,163. While this figure is only an estimate and the flooring has not been replaced, the landlord gave evidence that the old flooring had been removed and that had been factored into the selling price. The landlord also stated that the flooring was eight or nine years old. Standard insurance depreciation guides set the useful life of such flooring at 10 years on average. Therefore, I will allow the landlord 15 per cent of the value of this claim ( $.15 \times \$3,163 = \$474.35$ ).

Filing fee - \$50. Having found merit in the landlord's application, I find that he is entitled to recover the filing fee for this proceeding from the tenants.

Security deposit - \$700. I find that the landlord is entitled to retain the security deposit of \$700 plus interest accumulated since April 1, 2006 in set off against the balance owed.

The monetary award to the landlord is calculated as follows:

Loss of rent for July 2008	\$1,400.00
Cleaning and repairs	350.00
Garbage removal	210.84
Carpet cleaning	105.00
Replace carpets and kitchen floor	474.35
Filing fee	50.00
Sub total	\$2,590.19
Less retained security deposit	- 700.00
Less interest (April 1, 2006 to date)	- 21.20
<b>TOTAL owed by tenant to landlord</b>	<b>\$1,868.99</b>

**Conclusion**

Thus, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, in the amount of \$1,868.99 for service on the tenants.

September 30, 2008

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