



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      MNR, MNDC, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for unpaid rent, for compensation for a loss of rental income and damages to the rental unit and to recover the filing fee for this proceeding. The Landlord also applied to keep the Tenant's security deposit.

### Issues(s) to be Decided

1. Is the Landlord entitled to compensation for a loss of rental income and if so, how much?
2. Is the Landlord entitled to compensation for damages to the rental unit and if so, how much?
3. Is the Landlord entitled to keep the Tenant's security deposit?

### Background and Evidence

This tenancy started on December 1, 2007 and ended on July 15, 2009 when the Tenant moved out. Rent was \$760.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$367.50 on November 11, 2007.

The Tenant gave the Landlord written notice on June 13, 2009 that she was ending the tenancy on July 15, 2009. Consequently, the Tenant put a stop payment on her post-dated cheque for July's rent and gave the Landlord a replacement cheque for ½ of the amount of rent for July. The Tenant then put a stop payment on her replacement cheque and advised the Landlord that instead he could keep her security deposit in payment of July 2009 rent.

The Landlord said that he placed advertisements in the Vancouver Sun and Province newspapers on June 19-21, 2009 and July 9-12, 2009. The Landlord also said he placed a "For Rent" sign on the door with particulars about the rental unit and information regarding open house days and times. The Landlord admitted that he was out of the country and therefore not available to attend the open houses on the week ends of June 27<sup>th</sup> and 28<sup>th</sup> and July 4<sup>th</sup> and 5<sup>th</sup>. The Landlord claimed that when he did do showings, the prospective tenants complained about the carpets and walls and said they would not be willing to move in until they were cleaned and/or re-painted. The Landlord said it was important to him that he personally interview prospective tenants to

ensure they were suitable. The Landlord also said the rental unit was not re-rented until August 1, 2009.

The Tenant said that the Landlord seemed reluctant to try to find another tenant who could move in for July 15, 2009 but agreed that he would try. The Tenant said she was surprised when after the first open house, the Landlord advised her that no one was interested because the rental unit was in a popular area. The Tenant said the Landlord declined her offer to help and dismissed her suggestion that he also try to advertise the rental unit on Craig's List. Consequently, the Tenant said she placed an advertisement on Craig's List and had 78 responses after only one week. The Tenant said that she also had 11 people fill out applications (who were willing to move in on July 15, 2009) and she forwarded them to the Landlord. The Tenant claimed that she tried to contact the Landlord about the applications but she did not hear back from him again until July 13, 2009 when he left a letter on her door.

The Landlord denied that the Tenant tried to contact him and argued instead that the Tenant was avoiding his calls so she would not have to do the move out inspection with him. Consequently, the Landlord claimed he left a note on the Tenant's door on July 13, 2009. The Landlord claimed that he contacted the 11 applicants referred to him by the Tenant but only 8 responded to him and none of the applicants were willing to move in on July 15, 2009. The Tenant argued that this was the first time the Landlord had mentioned this.

A move in condition inspection report was not completed at the beginning or at the end of the tenancy. At the beginning of the tenancy, the Landlord's agent walked through the rental unit with the Tenant and had her sign an acknowledgement that the unit was in good condition except that the carpets needed cleaning and the walls needed painting. The Landlord claimed that at the end of the tenancy, the carpets and underlay (which were installed new in 2006) were damaged with pet urine and had to be removed and new carpeting and underlay installed. The Landlord claimed that the Tenant got a dog in March of 2009 without his consent and that dog soiled the carpets. In support of his position, the Landlord's witness claimed that the carpets were stained and smelled strongly of pet urine at the end of the tenancy. The Landlord's witness admitted that he was unaware of the condition of the carpets at the beginning of the tenancy.

The Tenant claimed that the stains in the carpet were there at the beginning of the tenancy and would not come out even when steam cleaned. The Tenant claimed that the previous tenant's dog caused the carpet stains. In support of her position, the Tenant's witness also recalled that there were stains in the carpet at the beginning of the tenancy and that the Tenant covered them with area rugs during the tenancy.

The Landlord claimed that the walls of the rental unit were scratched and some of them were painted a dark colour by the Tenant without his consent and therefore, he had to have the rental unit repainted. The Landlord's witness who painted the rental unit at the end of the tenancy claimed that he found the walls to be dirty at the end of the tenancy but could not recall any damage.

The Tenant claimed that at the beginning of the tenancy, she was told by the Landlord's agent that she could paint the rental unit any colour she liked. The Tenant's witness claimed that she helped the Tenant paint the whole rental unit white with the exception of a feature wall which was painted a dark brown and the trim of a patio door which was painted a grey-green. The Tenant's witness said she also helped the Tenant clean at the end of the tenancy and it was in better condition than at the beginning of the tenancy.

## Analysis

Section 37 of the Act says that at the end of the tenancy, a tenant must leave the rental unit clean and undamaged except for reasonable wear and tear.

Sections 23 and 35 of the Act say that a Landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the Tenant (within 7 to 15 days). A condition inspection report is intended to serve as some objective evidence of whether the Tenant is responsible for damages to the rental unit during the tenancy or if she has left a rental unit unclean at the end of the tenancy.

In the case, the onus is on the Landlord to show that the damages to the rental unit's carpet and walls was caused by the Tenant during the tenancy and that it was not reasonable wear and tear. In the absence of a move in condition inspection report (the information of which must comply with s. 20 of the Regulations to the Act) or some other evidence regarding the condition of the carpets at the beginning of the tenancy, I find that there is insufficient evidence to conclude that the Tenant damaged them. Consequently, that part of the Landlord's claim is dismissed.

RTB Policy Guideline #1 at p. 2 says that "any changes to the rental unit not explicitly consented to by the landlord must be returned to the original condition." It also states at p. 4 that "the landlord is responsible for painting the interior of the rental unit at reasonable intervals." The Landlord claimed that the Tenant did not have his permission to paint the walls a dark color. The Tenant claimed that she had the Landlord's agent's approval to paint the walls whatever colour she wanted. Given that the Landlord has the onus to show that the Tenant did not have consent and given the contradictory evidence of the Parties on this point, I find that there is insufficient



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evidence to conclude that the Tenant did not have consent to paint one of the walls a dark color. Given also the evidence of the Landlord's witness that the walls were dirty but that he did not consider it unusual for an old property, I conclude that painting was required in any event due to reasonable wear and tear and as a result, this part of the Landlord's claim is also dismissed.

Section 45(1) of the Act says that a Tenant of a month-to-month tenancy must give a Landlord one clear months notice that they are ending the tenancy. Consequently, the earliest the Tenant's Notice dated June 14, 2009 could have taken effect would have been July 31, 2009. However, section 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income. The Tenant admitted that she did not pay rent for July 2009 but argued that she should only be responsible for ½ of a month's rent because the Landlord did not take reasonable steps to try to re-rent the rental unit for July 15, 2009.

I accept the Landlord's evidence that the largest difficulty in renting the rental unit after July 15, 2009 had to do with the reluctance of prospective tenants to take the rental unit until the carpet was replaced and the unit re-painted. As indicated above, however, I find that there is insufficient evidence to conclude that the Tenant was responsible for the damage to the carpets or for re-painting the rental unit. Consequently, I find on a balance of probabilities that the rental unit could have been re-rented for July 15, 2009 if the carpets had been replaced and the unit re-painted. As a result, I find that the Landlord is not entitled to a loss of rental income for July 15-31, 2009 and that part of his application is dismissed.

I find that the Tenant is responsible for unpaid rent for the period July 1 – 14, 2009 in the amount of \$380.00 as well as for one late payment fee of \$20.00 for July 2009 and two NSF fees of \$7.00 each. I find that the Landlord is not entitled to two late fees for July 2009 as only one rent payment was unpaid that month. As the Landlord has been largely unsuccessful in this matter, I find that he is not entitled to recover the filing fee for this proceeding.

I order the Landlord to keep the Tenants' security deposit and accrued interest in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as follows:

Unpaid rent:	\$380.00
Late fee:	\$20.00
NSF fees:	<u>\$14.00</u>
Subtotal:	\$414.00



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Less: Security deposit:	(\$367.50)
Accrued interest:	<u>(\$5.99)</u>
Balance owing:	\$40.51

## Conclusion

A monetary order in the amount of **\$40.51** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that Court.

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: October 29, 2009.

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Dispute Resolution Officer