



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNR, MND, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for unpaid rent, for authority to retain the tenant's security deposit and for recovery of the filing fee.

The landlord appeared; the tenant did not appear.

The landlord testified that they served the tenant with the Application for Dispute Resolution and Notice of Hearing by registered mail on September 17, 2012. The landlord supplied a copy of the envelope of the registered mail, showing that the envelope was mailed and returned unclaimed.

The landlord further stated that the mail was sent to the forwarding address provided by the tenant and submitted a copy of the document proving the forwarding address provided by the tenant.

I find the tenant was served in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

The landlord provided evidence that that their evidence was sent to the tenant via registered mail on November 17, 2012.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary Issue*-The landlord claimed for unpaid rent on their application; however in the landlord's itemized breakdown of their claim, unpaid rent was not listed. I therefore have excluded that request from consideration.

Issue(s) to be Decided

Is the landlord entitled to retain the tenant's security deposit, to a monetary order and to recover the filing fee?

Background and Evidence

This tenancy began on November 21, 2008, monthly rent began at \$575.00 and the tenant paid a security deposit of \$287.50 at the beginning of the tenancy.

The landlord said that they discovered the tenant had abandoned the rental unit on August 30, 2012, when attending the rental unit. I note that the landlord submitted a copy of the tenant's notice of his intent to vacate the rental unit by August 31, 2012.

The landlord's monetary claim is \$3099.20, which includes \$2784.00 for clean-up costs, \$265.20 for utilities costs and the filing fee of \$50.00.

The landlord's additional relevant evidence included photos of the rental unit and the yard, the condition inspection report and a tenancy agreement.

As to the clean-up costs, the landlord's breakdown was as follows:

Yard clean-up/ 48 hours @ \$20/hour	\$960.00
Shed clean-up/26.50 hours @ \$20/hour	\$530.00
Cleaning	\$40.00
Landfill costs, 13 trips	\$234.00
<b>Total</b>	<b>\$2784.00</b>

The landlord submitted that the tenant left the rental unit in a deplorable condition by leaving broken furniture, discarded personal effects and garbage. Additionally, the landlord submitted that the tenant left dog feces in the home and did not provide any cleaning of the rental unit or yard.

The landlord said that the owner of the home provided the clean-up in the amount of the hours listed. The landlord described the clean-up as hauling of the tenant's personal property and garbage.

When questioned, the landlord confirmed that he had not provided a receipt for the landfill costs.

### Analysis

Based on the relevant oral and written evidence and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to mitigate their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

After examining the landlord's photographic evidence, I find it indisputable that the tenant left the rental unit in a state which required the removal of the tenant's personal property, garbage, and abandoned personal effects. I also find that it was necessary for the landlord to clean the rental unit, including the removal of the dog feces.

However, I find the number of hours claimed by the landlord to haul the garbage and personal property to be excessive when reviewing the photographs. I do not find it reasonable that cleaning the yard required 48 hours, cleaning the house required 40 hours and that cleaning the shed required 26.5 hours, as claimed by the owner. Additionally, I was concerned that the person alleged to have taken this amount of time to provide the clean-up, the owner, provided no signed documents or appeared at the hearing to verify his time or why he charged \$20.00 per hour.

I also considered the condition inspection report submitted by the landlord, which stated that upon the start of the tenancy, the rental unit is "very old outdated small house-Poor

Condition.” This led me to conclude that the amount of time alleged to have been spent by the owner to clean the house was excessive and unreasonable.

However, as I have found that the tenant did leave the house cluttered and unclean, I find that the landlord is entitled to some compensation for hauling the tenant’s personal property and garbage and I find a reasonable amount of time and hourly rate to be as follows:

<b>Claim</b>	<b>Amount</b>	<b>Accepted as Reasonable</b>	<b>Allowed</b>
House clean-up	\$800	10 hrs @ \$15/hr.	\$150
Shed clean-up	\$530	5 hrs @ \$15/hr	\$75
<b>Total</b>	<b>\$2280</b>		<b>\$375</b>

I find the landlord provided sufficient, undisputed evidence of the unclean state of the rental unit and I allow their claim for cleaning of \$40.00.

As to the landlord’s claim for repairs, I find that the landlord submitted insufficient evidence that the back door required 5 hours to repair and that the shed door required 6 hours to repair. In reaching this conclusion, I considered that the landlord did not supply evidence of the condition of the doors at the beginning of the tenancy, evidence that a repair occurred or photographic evidence from the beginning of the tenancy and at the end of the tenancy. I therefore dismiss the landlord’s claim for \$220.00.

I dismiss the landlord’s claim for landfill costs of \$234.00 due to the landlord’s failure to submit proof of the cost of this amount, which would be in the form of a receipt or invoice, which is step 3 of their burden of proof.

As to the landlord’s request for hydro costs, I find that the landlord failed to submit proof of such costs by way of a billing statement or other documentary proof and therefore provided no verification of a loss, step 3 of their burden of proof. I therefore dismiss their claim for \$265.20.

As the landlord’s application contained merit, I allow them recovery of the filing fee of \$50.00.

Due to the above, I find the landlord has proven a total monetary claim of \$465.00, comprised of \$375.00 for yard, house and shed clean-up, or hauling of garbage and personal property, \$40.00 for cleaning the rental unit and \$50.00 for recovery of the filing fee.

I allow the landlord to retain the tenant's security deposit of \$287.50 in partial satisfaction of their monetary claim allowed.

Conclusion

I grant the landlord a final, legally binding monetary order for the balance due in the amount of \$177.50, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement 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* and is being mailed to both the applicant and the respondent.

Dated: December 05, 2012.

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Residential Tenancy Branch