



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding COLUMBIA PROPERTY MANAGEMENT LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the rental unit or property; unpaid rent and utilities; and, authorization to retain the security deposit and pet deposit. The tenants did not appear at the hearing. The landlord provided registered mail receipts as proof the hearing documents were sent to each of the named tenants on December 20, 2012 using the forwarding address provided by the female tenant. The female tenant picked up both hearing packages sent by the landlord. I heard the tenants had separated and likely not living at the same address. I found I was satisfied the female tenant had been sufficiently served but I was unsatisfied the male tenant had been sufficiently served. Therefore, with the landlord's agreement, the application was amended to name the female tenant only and the hearing proceeded.

The landlord requested the monetary claim be amended to reduce certain amounts claimed on the original Application for Dispute Resolution and include one additional amount. I was satisfied the landlord's evidence package, which was also sent to the tenant by registered mail, contained sufficient information so as to indicate the revised amounts. In addition, to grant the amendment would significantly reduce the landlord's total claim against the tenant which would be to the tenant's benefit. Therefore, I granted the landlord's request to amend the monetary claim.

### Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for unpaid rent, utilities and damages, as amended?
2. Is the landlord authorized to retain the security deposit and pet deposit?

### Background and Evidence

The tenants took possession of the rental unit starting May 1, 2011 and the landlord collected a security deposit of \$775.00 and a pet deposit of \$775.00. A second tenancy agreement was entered into for a fixed term tenancy set to commence May 1, 2012 and expire April 30, 2013. The tenants were required to pay rent of \$1,550.00 on the 1<sup>st</sup> day of every month. The tenants vacated the rental unit by November 30, 2012.

The tenancy agreement includes a liquidated damages clause that provides that the landlord may recover \$300.00 from the tenants if they end the tenancy before the end of the fixed term as a pre-estimate of the administrative costs to re-rent the unit and payable in addition to any other amount the landlord may be entitled to recover such as loss of rent.

The landlord is seeking to recover the following amounts from the tenant, as amended:

Loss of rent: December 2012 and January 2013		\$ 3,100.00
Liquidated damages (lease break fee)		300.00
Fortis BC: up to October 5, 2012	\$ 48.00	
Fortis BC: up to November 6, 2012	218.05	
Fortis BC: up to November 30, 2012	<u>97.20</u>	363.25
Suite cleaning		160.00
Carpet cleaning		208.30
Broken window latch		198.24
Re-keying		133.40
Garbage disposal		125.44
Broken fridge rails		<u>107.50</u>
Total claim, as amended		\$ 4,696.13

The landlord provided the following submissions and evidence:

- On November 1, 2012 the landlord received written notice from the tenants of their intention to vacate the rental unit by November 30, 2012.
- On November 2, 2012 the landlord wrote a letter to the tenants advising them that the landlord would hold the tenants responsible for rent and utilities until the end of the fixed term or until the unit was re-rented and that every effort would be made to re-rent the unit.
- On November 6, 2012 the landlord began advertising the rental unit as available starting December 1, 2012. The unit was re-rented effective February 1, 2013.

- On November 27, 2012 the landlord posted a Notice of Final Opportunity to Schedule a Condition inspection for an inspection to take place at 1:00 p.m. on November 30, 2012.
- On November 30, 2012 the rental unit was inspected with the female tenant and the rental unit was found to be in need of garbage removal, re-keying, cleaning and repairs, as reflected on the move-out inspection report.
- Only one of the seven keys provided to the tenants were returned to the landlord, necessitating re-keying.
- The landlord proceeded to have the unit re-keyed, cleaned, repaired and garbage hauled away in early December 2012.
- The landlord discovered the broken fridge rails after the inspection.

Documentary evidence provided by the landlord included copies of: the tenancy agreement; the tenant's letter giving the landlord notice to end the tenancy; the landlord's letter of November 2, 2012; advertisements posted in November 2012; the Notice of Final Opportunity to Schedule a Condition Inspection; condition inspection reports; Fortis BC bills; repair, cleaning, re-keying and garbage removal invoices and receipts; the tenants' ledger account; and, registered mail receipts.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

### ***Unpaid/Loss of Rent***

Upon review of the tenancy agreement and the other undisputed evidence presented to me, I am satisfied the tenants breached their tenancy agreement by ending the tenancy before the end of the fixed term and the landlord put the tenants on notice that the landlord would hold them responsible for unpaid rent until the end of the fixed term or when the unit was re-rented. Upon review of the advertisements, I am satisfied the landlord made reasonable efforts to re-rent the unit. I accept the undisputed evidence

of the landlord that the unit was re-rented starting February 1, 2013. Therefore, I find the landlord entitled and I award the landlord loss of rent for the months of December 2012 and January 2013 in the amount claimed.

***Liquidated damages (lease break fee)***

Residential Tenancy Policy Guideline 4 provides information with respect to liquidated damages. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the fixed term by the tenant. If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum unless the sum is found to be a penalty. Upon review of the liquidated damages clause in the tenancy agreement, I find it to be reasonable pre-estimate of administrative costs to re-rent the unit and does not preclude the landlord from also claiming loss of rent. Therefore, I grant the landlord's request to recover liquidated damages of \$300.00 from the tenant in addition to the award for loss of rent.

***Utilities (Fortis BC)***

Upon review of the tenancy agreement and Fortis BC bills provided as evidence, I accept that tenants were responsible for paying for the natural gas used at the property and I find the landlord is entitled to recover the amounts claimed. Therefore, I award the landlord the amount of \$363.25 for the period up to November 30, 2012, as claimed.

***Cleaning, repairs, re-keying and garbage removal***

Under the Act, a tenant is required to leave the rental unit vacant, reasonably clean and undamaged at the end of the tenancy. Normal wear and tear does not constitute damage. The tenant is also required to return all keys or means of accessing the property to the landlord at the end of the tenancy.

Upon review of the move-out inspection report and security deposit statement completed at the time of the move-out inspection I find the tenant was in agreement with the landlord's assessment of the property with respect to cleaning, damage, re-keying and garbage removal required. I find the landlord has provided sufficient evidence to substantiate the amounts claimed, as amended, to remedy those deficiencies.

I also accept the undisputed evidence before me that the landlord discovered the broken fridge rails after the move-out inspection was performed and that this damage was caused during the tenancy. I find the landlord has also substantiated the cost of this repair.

In light of the above, I award the landlord the amounts requested by way of the amended claim to clean, repair, re-key and haul away garbage.

***Filing fee, security deposit and pet deposit***

I award the landlord \$50.00 for the filing fee. I authorize the landlord to retain the security deposit and pet deposit in partial satisfaction of the amounts awarded to the landlord.

In light of the above awards, I provide the landlord a Monetary Order for the balance owing, calculated as follows:

Amounts awarded to landlord, as claimed	\$ 4,696.13
Filing fee	50.00
Less: security deposit and pet deposit	<u>(1,550.00)</u>
Monetary Order	\$ 3,196.13

The Monetary Order must be served upon the tenant and may be enforced in Provincial Court (Small Claims) to enforce as an order of the court.

**Conclusion**

The landlord has been authorized to retain the tenant's security deposit and pet deposit and has been provided a Monetary Order for the balance of \$3,196.13 to serve and enforce as necessary.

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: March 14, 2013

---

Residential Tenancy Branch

