



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MRD; MNR; MNDC, MNDS; FF

### **Introduction**

This is the Landlord's application for a Monetary Order for damages, unpaid rent and loss of revenue; to retain the security deposit in partial satisfaction of her monetary award; and to recover the cost of the filing fee from the Tenants.

The Landlord gave affirmed testimony at the Hearing.

The Landlord testified that the Notice of Hearing documents were mailed to each of the Tenants on November 27, 2014, via registered mail, to their forwarding address which they provided to the Landlord on November 17, 2014. The Landlord provided copies of the registered mail receipts and tracking numbers in evidence. A search of the Canada Post tracking system indicates that the documents were successfully delivered to the Tenants on December 1 and December 2, 2014.

The Landlord testified that she also sent copies of her documentary evidence to each of the Tenants, by registered mail to their forwarding address, on May 20, 2015. The Landlord provided the tracking numbers for these registered packages. A search of the Canada Post tracking system indicates that the documents were successfully delivered to both of the Tenants on May 21, 2015.

Based on the Landlord's affirmed testimony and documentary evidence, I am satisfied that both of the Tenants were duly served. Despite being served with the Notice of Hearing documents and documentary evidence, the Tenants did not sign into the teleconference and the Hearing proceeded in their absence. The teleconference remained open for 25 minutes.

### **Issues to be Decided**

- Is the Landlord entitled to a monetary award for unpaid rent and utilities, loss of revenue for the month of November, 2014, and the cost of cleaning and repairing damages to the rental unit?

### **Background and Evidence**

#### **The Landlord gave the following testimony and evidence:**

This tenancy began on March 15, 2013. A copy of the tenancy agreement was provided in evidence. The tenancy agreement is a one year lease, ending on March 31, 2014. At the end of the term, the tenancy continued on a month-to-month basis. Monthly rent was \$1,750.00, due the first day of each month. Monthly rent does not include utilities. The Tenants were responsible for 35% of the utilities (including cable charges). The Tenants paid a security deposit in the amount of \$875.00 on March 9, 2013 and a pet damage deposit in the amount of \$875.00 on March 15, 2015.

On October 3, 2014, the Tenants provided the Landlord with late notice that they would be ending the tenancy on October 31, 2014. The Landlord testified that the Tenants paid rent for October, 2014. The Landlord stated that she showed the rental unit 13 times in October, 2014, in an attempt to mitigate her loss, but was unable to re-rent it until December 1, 2014. The Landlord seeks a monetary award for loss of revenue for the month of November, 2014, in the amount of **\$1,750.00**.

The Landlord testified that the Tenants did not pay all of the rent for March, 2013 to October, 2014, and did not pay their share of utilities. She stated that the Tenants paid some of the pro-rated rent of \$875.00 that was due for March 15 – 31, 2013, in monthly installments, but not all of it. The Landlord stated that she and the Tenants had an agreement that some money could be deducted from the rent in exchange for the Tenants providing her with some personal training (\$110.00). She stated that she has taken this into consideration and seeks a monetary award for unpaid rent and utilities, calculated as follows:

35% of utilities (hydro, gas, cable)	\$779.86
Rent due for March, 2013 to September, 2014	\$11,375.00
Less total amount paid by Tenants to September, 2014	<u>&lt;\$11,300.00&gt;</u>
subtotal	\$854.86
Plus amount the Tenants owe the Landlord for a desk	\$75.00
Less amount she owes Tenants for personal training	<u>&lt;\$110.00&gt;</u>
TOTAL	\$819.86

The Landlord stated that she is seeking an award of **\$800.00** for unpaid rent and utilities.

The Landlord stated that the Tenants did not attend for the move-out condition inspection, even though she provided them with a Notice of Final Opportunity to Schedule a Condition Inspection, a copy of which was provided in evidence. She stated that the Tenants did not shampoo the carpets at the end of the tenancy and that the rental unit was not reasonably clean. The Landlord seeks a monetary award in the amount of **\$80.00** for carpet cleaning and

**\$250.00** (10 hours @\$25.00 per hour) for her cleaner's labour. The Landlord provided a breakdown of the work done by her cleaner in evidence. She stated that she used a "commercial style carpet cleaner" to clean the carpets.

The Landlord testified that the Tenants damaged some blinds in one of the bedrooms, which had to be replaced. She seeks a monetary award in the amount of **\$72.77** for the cost of replacing the blinds, plus her handyman's labour costs for removing and replacing the blinds. The Landlord stated that she has lost the receipt for the blinds and therefore did not provide it in evidence, but that she knows the amount because she went back to the supplier and confirmed the amount.

The Landlord stated that the carpets had three stains, which would not come out after she used a professional steam cleaner. She stated that there were also four "pulls" in the carpets that the Tenants were responsible for. The Landlord seeks a monetary award in the amount of **\$40.00** for the "pulls" and **\$75.00** for the stains. She stated that the carpets are 6 years old and that she has not replaced or repaired them.

The Landlord stated that she always charges her tenants \$10.00 each for "pulls" and \$25.00 for each stain.

The Landlord stated that she originally requested a monetary award for damage to the washing machine lever in the amount of \$27.00, but that she is withdrawing that portion of her claim. Likewise, she is withdrawing this portion of her claim for her handy-man's labour to remove and replace the lever (2 hours @\$40.00 per hour). Therefore, she is seeking a monetary award in the amount of **\$160.00** for her handyman's labour, instead of \$240.00 as claimed on her Monetary Order Worksheet. The Landlord provided a copy of an invoice from her handyman in evidence.

The Landlord testified that she gave the Tenants 3 keys at the beginning of the tenancy, but that only one key was returned to the Landlord. She testified that she had to buy a new lockset for the rental unit for security reasons. The Landlord seeks a monetary award in the amount of **\$15.00** for a new lockset. The Landlord stated that she has lost the receipt for the new lockset.

### **Analysis**

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party making the claim has the burden of proof to establish their claim on the civil standard, the balance of probabilities.

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and

4. Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In the circumstances before me the Landlord has the burden of proving her claim.

I accept the Landlord's affirmed testimony and documentary evidence in its entirety. The Landlord's testimony was forthright and probable. The Tenants did not provide contradictory documentary evidence, or sign into the teleconference, though duly served.

Regarding loss of revenue for November, 2014

Section 45(1) of the Act provides:

- 45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
  - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case, rent was payable on the first day of each month, and therefore I find that the Tenants did not provide the Landlord with due notice to end the tenancy effective October 31, 2014.

Section 53 of the Act provides, in part:

- 53** (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.
- (2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

I accept that the Landlord attempted to re-rent the rental unit for November 1, 2014, and was unable to do so until December 1, 2014. Therefore, I find that the Landlord is entitled to loss of revenue for the month of November, 2014, in the amount of **\$1,750.00**.

Regarding unpaid utilities and rent to September, 2014

With respect to unpaid utilities, I find that the Landlord provided insufficient evidence to prove her claim (for example copies of utility bills indicating the cost of the utilities and therefore what the Tenant's 35% share is). Parties are expected to provide their best evidence to support their claims. Copies of the utility bills were available to the Landlord, but she did not provide them. Therefore, I find that the Landlord did not prove element number 3 of the test for damages provided above.

With respect to unpaid rent, the Landlord included the cost of a desk; however, I find that the Landlord provided insufficient evidence that this loss occurred due to the actions or neglect of the Tenants in violation of the Act, regulation or tenancy agreement. The Landlord did not allege that the desk was included in the tenancy agreement, and if it was, that the Tenants damaged the desk or that it cost \$75.00 to repair or replace it. I accept the Landlord's testimony that she agreed that the Tenants could deduct \$110.00 from rent that was due, and I find that this falls under the tenancy agreement.

After deducting the utilities underpayment and the cost of the desk from the Landlord's calculations, I find that the Tenants do not owe the Landlord rent for the period of May, 2013 to September, 2014, and this portion of the Landlord's claim is dismissed.

Regarding the remainder of the Landlord's claim

I allow the Landlord's claim with respect to carpet cleaning and the general cleaning of the rental unit in the total amount of **\$330.00** (\$250.00 + \$80.00). I find that the Landlord provided sufficient documentary evidence with respect to her cleaner's labour costs and that \$80.00 is a reasonable amount for the Landlord's labour in cleaning the carpets.

I dismiss the Landlord's claim with respect to replacing the blinds. I accept the Landlord's undisputed testimony that the blinds were damaged; however, I find that the Landlord did not provide sufficient documentary evidence to support her claim of \$72.77 and therefore did not meet part 3 of the test for damages.

I dismiss the Landlord's claim with respect to the carpet stains and pulls. The Landlord testified that the carpets are 6 years old and that she has not repaired them or replaced them. Therefore, I find that the Landlord has not suffered a loss.

I allow the Landlord's claim with respect to replacement of the lockset. The Landlord did not provide a copy of the receipt; however, I accept that the Tenants did not return all of the keys and I find that **\$15.00** is a reasonable amount for this portion of her claim.

I allow the Landlord's claim with respect to her handyman's labour costs in the amount of **\$160.00**. The Landlord provided a copy of her handyman's invoice in evidence.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit and pet damage deposit towards partial satisfaction of the Landlord's monetary award.

The Landlord has been successful in her application and I find that she is entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

I hereby provide the Landlord with a Monetary Order, calculated as follows:

Loss of revenue for November, 2014	\$1,750..00
General cleaning and carpet cleaning	\$330.00
Replacement of lockset	\$15.00

Handyman's labour costs	\$160.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$2,305.00
Less security deposit and pet damage deposit	- \$1,750.00
<b>TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF</b>	<b>\$555.00</b>

**Conclusion**

I hereby grant the Landlord a Monetary Order in the amount of **\$555.00** for service upon the Tenants. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: June 29, 2015

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Residential Tenancy Branch

