



# Dispute Resolution Services

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

## Decision

Dispute Codes: MNR, MND, CNC, RR, MNSD, FF, O

## Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent and utilities, for compensation for damages to the rental unit and to recover the filing fee for this proceeding. The Tenants applied to cancel a Notice to End Tenancy, for a rent reduction or alternatively compensation for alleged harassment by the Landlord from September 17, 2008 to the end of the tenancy and for the return of their security deposit.

This matter was originally scheduled for hearing on November 18, 2008, however, the Tenants submitted a letter to the Residential Tenancy Branch dated November 7, 2008 requesting an adjournment of at least 2 weeks due to a family emergency. The Tenants did not attend the teleconference hearing on November 18, 2008 and as a result, the hearing was adjourned to today's date and new hearing notices were sent to the parties on November 19, 2008 at the addresses indicated on their respective applications. Despite being issued a new Notice of Hearing, the Tenants did not attend the reconvened hearing. I find that the Tenants had reasonable notice of the hearing date and the hearing proceeded in their absence.

## Issue(s) to be Decided

1. Are there arrears of rent and if so, how much?
2. Is the Landlord entitled to compensation for damages and if so, how much?

## Background and Evidence

This month to month tenancy started on December 23, 2007 and ended on October 1, 2008. Rent was \$905.00 per month. The Tenants paid a security deposit of \$450.00 at the beginning of the tenancy. In proceedings under file #723814/723889, the Dispute Resolution Officer found that the Tenants were in arrears of rent for August and September, 2008 in the amount of \$1,840.00. A monetary order was not issued for that amount. The Landlord claims the arrears for those months are actually \$1,810.00 and also claims that the Tenants have still not paid that amount.

The Landlord said the Tenants sent him a brief e-mail at the beginning of September, 2008 that said "I'm leaving at the end of the month." The Landlord said he was not sure if the Tenants would move or not because they had told him 2 previous times they were moving but did not. The Landlord said in any event he did not get proper written notice from the Tenants and did not hear anything more until the caretaker of the building advised him the Tenants had moved out on October 1, 2008. The Landlord said the Tenants left an old couch and some garbage in the rental unit that they said they would retrieve but never did. The Landlord argued that the Strata Rules required the Tenants to move out at the end of the month (ie. September 30, 2008) and that they were aware of that rule.

In proceedings under file #723814/723889, the Dispute Resolution Officer also found that the Tenants were responsible for damages to the rental unit caused by flooding. The Landlord claimed that it took approximately a week to remove the Tenants' garbage and sofa and to have someone come in to repair the damaged drywall and replace locks. The Landlord did not know the amount of damages at the time of hearing and that part of his claim is dismissed with leave to reapply.

However, the Landlord did ask for loss of rental income for October, 2008 in his application. The Landlord said due to the Tenants' failure to give him proper notice, their late departure and the need to make repairs caused by them, he could not find another Tenant until November, 2008.

### Analysis

Given the findings set out in the Decision under files #723814/723889, I find that the Landlord is entitled to rent arrears for August and September, 2008 in the amount of \$1,810.00.

Although the Landlord had given the Tenants a Notice to End tenancy, in the proceedings noted above, the Notice was set aside. Consequently, I find that the Tenants were obligated under the Act to give the Landlord notice that they were ending the Tenancy. Section 45 of the Act says that a Tenant in a periodic tenancy must give one clear month's notice to the Landlord. Section 52 of the Act says in order to be effective, the Notice must be in writing, set out the address of the rental unit, the date the tenancy will end and be dated and signed by the Tenant. I find that the Tenants did not give the Landlord proper (or effective) notice they were ending the tenancy and as a result, I find that the Landlord is entitled to loss of rental income for October, 2008 in the amount of \$905.00.

I order the Landlord to keep the Tenants' security deposit plus accrued interest in partial payment of the rent arrears. I also find that the Landlord is entitled to recover his \$50.00

filing fee for this proceeding. The Landlord will receive a monetary order for the balance owing as follows:

Rent Arrears:	\$1,810.00
Loss of rental income:	\$905.00
Filing Fee:	<u>\$50.00</u>
Subtotal:	\$2,765.00
Less: Security deposit:	(\$450.00)
Accrued interest:	<u>(\$6.51)</u>
TOTAL OWING:	\$2,308.39

### Conclusion

As there was no evidence in support of the Tenants' application, it is dismissed without leave to reapply. The Landlord's application for a monetary order for damages to the rental unit is dismissed with leave to reapply. A Monetary Order in the amount of **\$2,308.39** has been issued to the Landlord and a copy of it must be served on the Tenants. If the Tenants do not pay the amount of the order, it may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.