



# **Dispute Resolution Services**

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

## **DECISION**

**Dispute Codes:** MNR, MNDC, MNSD and FF

### **Introduction**

This application was brought by the landlord seeking a Monetary Order for loss of rent, damages, and filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

Despite being served with the Notice of Hearing in person on November 20, 2008, the tenant did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his absence.

### **Issue(s) to be Decided**

This application requires a decision on whether the landlord is entitled to a Monetary Order, the amount, and if the filing fee should be included and whether the security deposit may be retained against any balance owed.

### **Background and Evidence**

This tenancy began April 15, 2008 under a 12 month fixed term rental agreement and, according to evidence given by the landlord, ended when the tenant moved out without notice on October 30, 2008. Rent was \$1,575 per month and the landlord holds a security deposit of \$750 paid on April 15, 2008.

During the hearing, the landlord submitted copy of an email dated November 5, 2008 advising that he had moved out of the rental unit due to health concerns over mold on the ceiling of the master bedroom. The landlord also stated that when she spoke with the tenant in September, he assured her there were no problems with the rental unit.

She stated that on regaining possession, she was able to remove the small amount of mold quite easily by washing it with TSP. She stated that it appeared to just be on the surface and was possibly a result of the heat being kept too low.

The landlord also gave evidence that the tenant had left without refilling the oil tank as required by the rental agreement. She had it refilled at a cost of \$231.84.

### **Analysis**

While there are remedies available under sections 32 and 33 of the *Act* (repairs and maintenance and emergency repairs) for tenants who have such concerns, a tenant is not excused under the present circumstances from the provisions of section 45 of the *Act*. This section requires that the tenant give at least one month written notice served before the next rent due date.

In the case of a fixed term rental agreement, the tenant may be held responsible for loss of rent for the remainder of the term; however, in this matter, the landlord was able to find a new tenant for December 1, 2008.

Therefore, the landlord claims and I find she is entitled to a Monetary Order for rent/loss of rent for November 2008, the cost of refilling the oil tank and the filing fee for this proceeding. I further find that the landlord is authorized to retain the security deposit in set off against the balance.

The Monetary Order is calculate as follows:

November rent/loss of rent	\$1,575.00
Cost to refill oil tank	231.84
Filing fee	<u>50.00</u>
Subtotal	\$1,856.84
Less retained security deposit	- 750.00
Less interest (May 1, 2006 to December 31, 2008)	- <u>8.02</u>
<b>TOTAL</b>	<b>\$1,098.82</b>

## Conclusion

Thus, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$1,098.82 for service on the tenant.

January 12, 2009

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Dispute Resolution Officer