



# Dispute Resolution Services

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

## Decision

### Dispute Codes:

MNSD FF

### Introduction

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the "Act") to hear this matter and decide the issues.

This is the Tenant's application for a monetary order for damage or loss under the Act, regulation or tenancy agreement.

I reviewed the evidence on the case file prior to the Hearing. Both parties gave affirmed evidence and the Hearing proceeded on its merits.

### Issue(s) to be Decided

- (1) Does the Residential Tenancy Act apply, and if so
- (2) Is the Tenant entitled to a monetary order for damage or loss?

### Preliminary Matter

There is no written Tenancy Agreement. However, section 1 of the Act defines a Tenancy Agreement as follows:

**"tenancy agreement"** means an agreement, **whether written or oral**, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

(my emphasis)

The Landlord exercised powers and permitted occupation of the rental unit under an oral tenancy agreement and accepted rent payments from the Tenant. The Tenant paid monthly rent directly to the Landlord. I therefore find that the Landlord was a landlord and the Tenant was a tenant as defined by the Act.

The Landlord's position is that she shared a kitchen and bathroom in the rental unit with the Tenant and therefore the Act does not apply. Section 4 of the Act states, in part:

**What this Act does not apply to**

**4** This Act does not apply to

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the **owner** of that accommodation,

(my emphasis)

The Landlord testified that she rents the rental unit and does not own it.

I find the following:

- There was an oral Tenancy Agreement;
- The Landlord is a landlord and the Tenant is a tenant under the oral Tenancy Agreement; and
- Section 4 of the Act does not apply because the Landlord does not own the rental unit.

Therefore, having established jurisdiction under the Act, this Hearing may proceed.

**Background and Evidence**

The parties agree, as follows:

- The tenancy started on September 1, 2008.
- The tenancy ended October 15, 2008.

- Monthly rent was \$600.00 and included utilities. The Tenant paid the monthly rent directly to the Landlord.
- There was no security deposit paid to the Landlord by the Tenant.
- There was no move-in or move-out inspection done.
- The Tenant's cheque for October, 2008 rent was returned to the Landlord "NSF".
- The Landlord did not give the Tenant a Notice to End Tenancy.
- The Tenant did not give the Landlord a Notice to End Tenancy.
- The Landlord and the Tenant shared the rental unit.

### Tenant's evidence

The Tenant testified that he served the Landlord with a copy of the Application for Dispute Resolution filed December 11, 2008 and amended on December 15, 2008 together with the hearing package by personal service at the Landlord's place of business on December 15, 2008 at 1:00 p.m.

The Tenant testified that he gave the Landlord verbal notice on September 29, 2008, that he would be vacating the rental unit at the end of October.

The Tenant testified that his cheque for October's rent bounced. The Tenant testified that he asked the Landlord if she would hold on to a replacement cheque until his payday. The Tenant testified that the Landlord denied his request and insisted he provide her with October's rent within two days. The Tenant testified that he took out a loan to make sure he had the money, and offered the Landlord cash, but the Landlord refused to accept the money.

The Tenant testified that when he returned home on the evening of October 14, 2008, most of his belongings were packed and in the hallway next to the door. The Tenant testified that the Landlord insisted that he move out immediately. The Tenant testified that he felt threatened and moved out the following morning.

The Tenant testified that he had to hurry to find other living accommodation and missed a day of work. The Tenant testified that he was able to find other accommodation, but at a much higher rent, and that he had to sign a six month lease.

The Tenant testified that on November 28, 2008, the Landlord successfully cashed the “NSF” cheque he had originally provided for October’s rent, which jeopardized his rent payment for his new accommodations. The Tenant testified he had to take another day off work to deal with the issue and ended up borrowing money from his parents to cover his rent.

The Tenant asked for a monetary order, as follows:

- Recovery of filing fee	\$50.00
- Loss of 2 day’s pay	\$516.74
- Recovery of cashed NSF cheque	\$600.00
- Stop payment charge	\$10.00
- Loan and interest for 60 months	\$1671.00
- Aggravated damages for unlawful eviction	\$1000.00
- Aggravated damages for cashing NSF cheque	\$1000.00
- Difference in rent for October, 2008	\$53.10
- Loan from parents	<u>\$600.00</u>
TOTAL	\$5,550.84
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The Tenant provided a copy of his pay stub to substantiate his daily pay rate. He also provided a copy of a loan agreement for a loan of \$11,671.95 @ 29.99% interest, for which he alleges \$600.00 was to cover his NSF cheque.

#### Landlords’ evidence

The Landlord testified that the Tenant’s rent cheque for the month of October was returned to her “not sufficient funds” on October 10, 2008. The Landlord testified that she felt intimidated by the Tenant when she asked for a replacement cheque. The

Landlord stated that the Tenant was defensive and told her she would have to wait until he got paid. The Landlord's stated that her position is that rent was due on the first of the month and that she didn't feel she should be responsible to cover his portion of the rent. The Landlord stated that she felt uncomfortable in her own home and wanted the Tenant to leave.

The Landlord testified that she certified the Tenant's NSF cheque (representing payment of rent for October, 2008) and had it re-presented for payment in November of 2008. The Landlord agreed that the Tenant moved out of the rental unit on October 15, 2008, at her insistence.

### **Analysis**

Both parties provided a rather large amount of evidence, some of which not relevant to this Hearing. I have based my decision on the following undisputed facts:

- The rent was \$600.00 per month, due on the first day of the month, and included utilities.
- The Tenant gave verbal notice of his intent to vacate the rental unit effective October 31, 2008.
- The Tenant's rent cheque for the month of October, 2008, was returned to the Landlord "not sufficient funds".
- The Landlord did not provide the Tenant with a 10 day Notice to End Tenancy for Unpaid Rent, but evicted the Tenant on October 15, 2008.
- The Tenant had to take a day off work to find alternate accommodation after being evicted.
- In November, 2008, the Landlord certified the Tenant's NSF cheque for October's rent and cashed the cheque. She did not return any of the funds to the Tenant.

This is the Tenant's application for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the filing fee of \$50.00 for his application.

The Tenant claims loss of 2 day's pay. He works as a teacher, working Mondays to Fridays, and was improperly evicted without Notice on October 15, 2008, which was a Wednesday. It is against the law for a landlord to evict a tenant without a Writ of Possession from the BC Supreme Court. The Tenant had to make alternate arrangements for accommodation, and I allow this portion of his claim.

I dismiss the Tenant's claim for the additional day's pay for a day when he alleges he had to arrange for further funds when the Landlord cashed his NSF cheque. This situation arose because of his bounced cheque for October 2008 rent and is therefore the Tenant's responsibility. A tenant must pay rent when it is due. A landlord is under no obligation to give a tenant additional time to pay the rent. If the Tenant's October rent cheque had been honoured by the bank, the Tenant would not have been in the position of having to take additional time off work to make arrangements to borrow money from his parents.

With respect to the Tenant's claim of \$600.00 for the October rent cheque being cashed, I allow \$300.00 for that portion of his claim as he was living in the rental unit for half of the month of October and is responsible for  $\frac{1}{2}$  of the month's rent, which he did not pay.

I allow the Tenant's claim for the difference he paid in rent for the portion of October, 2008, in the amount of \$53.10.

The Tenant has been partially successful in his application and I allow his application for recovery of the \$50.00 filing fee from the Landlord for this application.

I dismiss the remainder of the Tenant's claim for damages, as the Tenant was the first party to breach the tenancy agreement when his October 2008 rent cheque bounced. I dismiss the Tenant's claim for repayment of the loans, as these loans were incurred as a direct result of his failure to pay rent on time in October 2008.

I therefore find that the Tenant has established a monetary claim as follows:

Loss of one day's pay	\$258.37
Recovery of rent from October 15 to 31, 2008	\$300.00
Difference in rent paid for October, 2008	\$53.10
Recovery of the \$50.00 filing fee	<u>\$50.00</u>
Total	\$661.47
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### **Conclusion**

I grant the Tenant a monetary order under section 67 of the Act for \$661.47. This order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

February 25, 2009

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