



# Dispute Resolution Services

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

## Decision

Dispute Codes: MNR, MNSD, FF

## Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent and utilities as well as to recover the filing fee for this proceeding. The Landlord also applied to keep all or part of a security deposit. The Tenant applied for the return of a security deposit as well as to recover the filing fee for this proceeding.

## Issue(s) to be Decided

1. Are there arrears of rent and if so, how much?
2. Is the Landlord entitled to keep all or part of the Tenant's security deposit?

## Background and Evidence

This 6 month fixed term tenancy started on May 2, 2008 and ended on December 1, 2008 when the Tenant moved out. Rent was \$1,075.00 per month plus one-half of the hydro for the rental property. The Tenant paid a security deposit of \$537.50 at the beginning of the tenancy. The Tenant gave "30 days" written notice to the Landlord on November 5, 2008 that she would be ending the tenancy. The Tenant said she made a written request for the return of her security deposit and gave her forwarding address in writing to the Landlord on or about January 2, 2009 by leaving it in the Landlord's mailbox. The Landlord said she received the Tenant's letter on or about January 9, 2009.

The Tenant claimed a by-law officer from the City of Courtenay attended the rental unit on November 7, 2008 and advised her that the rental unit was an illegal suite. The Tenant provided a copy of a letter from the by-law enforcement officer who claimed that the Landlord advised him that once the Tenant moved out, the rental unit would be "decommissioned." The Landlord said she tried to re-rent the rental unit for December, 2008 as "shared accommodations" but to date has not been able to re-rent it.

The Parties agree that the Tenant did not pay utilities for November, 2008. The Tenant says that the Landlord did not give her a copy of the bill and argued she was entitled to a reduced amount for that month because workmen were using a disproportional

amount of hydro that month. The Landlord admitted she did not provide the Tenant with a copy of the Hydro bill for November and did not provide a copy of the bill into evidence at the hearing.

### Analysis

Section 38(1) of the Act says that a Landlord has 15 days from the later of the end of the tenancy or the date she receives the Tenant's forwarding address in writing to either return the deposit to the Tenant or to apply for dispute resolution to make a claim against it. If a Landlord fails to do either of these things and does not have the Tenant's written authorization to keep all or part of the security deposit, then pursuant to s. 38(6) of the Act the Landlord must return double the amount of the security deposit (plus accrued interest on the original amount) to the Tenant.

I find that the Landlord received the Tenant's forwarding address in writing on January 9, 2009 but did not apply for dispute resolution until well after the 15 day time limit set out in section 38(1) of the Act. As a result, I find that the Landlord is liable to return double the amount of the security deposit to the Tenant.

If a tenancy agreement does not state whether the tenancy will continue at the end of a fixed term or not, there is a presumption that the tenancy will continue on a month to month basis after the expiry of the fixed term. Section 45 of the Act says that a Tenant must give a Landlord one clear month notice that they are ending a tenancy (not 30 days as the Tenant suggested). In the normal course, the Tenant's notice would not have taken effect until December 31, 2008. However, I find that the tenancy was frustrated prior to that time when the City of Courtenay found the rental unit not comply with the municipal building Code for an independent suite and therefore it was not habitable under the same terms of the tenancy agreement. As a result, I find that as of November 30, 2008, the tenancy came to an end because it was frustrated by an Order of the Municipality.

Consequently, I find that the Tenant is not liable for loss of rental income for December, 2008 and that part of the Landlord's claim is dismissed. In the absence of a Hydro bill for the month of November, 2008, I also find there is insufficient evidence of the amount owed by the Tenant for utilities and as a result, this part of the Landlord's claim is also dismissed.

As the Tenant has been successful in this matter, I find that she is entitled to recover her filing fee. In summary, the Tenant has made out a claim for the following amounts:

Double security deposit:	\$1,075.00
Accrued interest:	\$5.40
Filing fee:	<u>\$50.00</u>
Total Owing:	\$1,130.40

### Conclusion

The Landlord's application is dismissed. A Monetary Order in the amount of **\$1,130.40** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be enforced in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.