



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes            MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a Monetary Order to recover loss of rental income and a Monetary Order to recover the filing fee. The landlord also requests an Order to keep all of the security deposit plus any accrued interest in partial payment towards outstanding rent.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent to the tenant by registered mail on August 12, 2009. Mail receipt numbers were provided by the landlord's agent at the outset of the hearing. The tenant was deemed to be served the hearing documents on August 17, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

- Is the landlord entitled to a monetary order for loss of rental income?
- Is the Landlord entitled to keep all or part of the security deposit and accrued interest?
- Is the landlord entitled to a Monetary Order to recover the filing fee

### Background and Evidence

The tenancy started on November 01, 2004 and ended on July 31, 2009. The rent for the unit was \$920.00 per month due on the first of each month. The tenancy was a month to month agreement. A security deposit was paid on October 13, 2004 of \$425.00.

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The landlord testifies that the tenant gave notice to end the tenancy on July 06, 2009 to end the tenancy on July 31, 2009. The landlord gave the tenant a letter on August 05, 2009 requesting consent from the tenant to keep the security deposit to offset rent for August, 2009 due to not receiving one months notice to end the tenancy. The landlord states that the tenants did not sign this letter and requested the return of their security deposit. The landlord testifies that they made attempts to re-rent the unit to try to mitigate their loss of rent for August but were unable to re-rent the unit until September 01, 2009. The landlord seeks a loss of rental income for August of \$920.00 and to use the tenants' security deposit in partial payment towards this loss.

The landlords' application seeks a Monetary Order for \$1,345.00. I find he has made an error in his calculations and added the security deposit instead of offsetting it against the amount owed by the tenants

The tenant has sent in a letter as evidence but did not attend the hearing. The tenants letter discusses problems with the rental unit which are unconnected with the landlords application.

## Analysis

I find that in the absence of any evidence from the tenant that the tenant did not give one clear months notice to the landlord to end the tenancy pursuant to section 45(1) of the *Act*. This section of the *Act* states:

**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.

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If the tenant fails to provide proper notice to the landlord then the landlord is entitled to recover rent for the following month that the tenancy would have continued had notice not been given. A landlord must show that he has tried to mitigate his loss by making attempts to re-rent the unit. I find the landlord did make attempts to re-rent the unit and was unable to do so for the month of August, 2009. Therefore, I find the landlord is entitled to recover a loss of rental income for August, 2009 to the amount of **\$920.00** from the tenant.

I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's security deposit and any accrued interest (**\$425.00 + \$15.06**) in partial payment towards the loss of rental income. As the landlord has been successful in this matter, he is also entitled to recover his **\$50.00** filing fee for this proceeding. The landlord will receive a monetary order for the balance owing as follows:

Loss of rental income for August, 2009	\$920.00
Less security deposit and accrued interest	(-\$440.06)
Total amount due	<b>\$529.94</b>

### Conclusion

A Monetary Order in the amount of **\$529.94** has been issued to the landlord and a copy of it must be served on the tenant. If the amount of the order is not paid by the tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: December 04, 2009.

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Dispute Resolution Officer