



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes:

OPB, MNR, MNSD, FF

### Introduction

This hearing was scheduled in response to the Landlords' Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession because the Tenants breached a term of the tenancy agreement; a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the Tenants for the cost of this Application for Dispute Resolution. The Landlords withdrew their application for an Order of Possession, as the rental unit has been vacated.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Tenants were denied the opportunity to present evidence in relation to problems with mould in the rental unit, including calling witnesses to attest to the mould in the rental unit, as mould was not relevant to the issues that were in dispute at this hearing. The Tenants were advised that they had the right to file an Application for Dispute Resolution in which they claimed compensation for damages that relate to mould.

### Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The Landlords and the Tenants agree that they entered into a tenancy agreement that required the Tenants to pay monthly rent of \$1,075.00 on the first day of each month and that the Tenants paid a security deposit of \$537.50 on March 15, 2009.

The Landlords and the Tenants agree that the male Tenant had a conversation with the each Landlord sometime during the middle portion of November in which he advised that there was a problem with mould in the rental unit.

The Landlord with the initials "L.D". stated that on November 18, 2009, he again spoke with the male Tenant, who advised him that because the problem with the mould had not been rectified he would be giving one month's notice to end the tenancy which he interpreted to mean that the tenancy would end on December 31, 2009. He stated that he verbally agreed to end the tenancy on December 31, 2009.

The male Tenant Landlord. stated that on November 17, 2009, he again spoke with the Landlord with the initials "L.D"., at which time he advised him that because the problem with the mould had not been rectified he was giving one month's notice to end the tenancy. He stated that he understood this to mean that the tenancy would end on December 17, 2009.

The Landlords and the Tenants agree that neither party served written notice to end this tenancy. The Tenants declared that they vacated the rental unit on December 15, 2009. The Landlords declared that they do not know precisely when the rental unit was vacated but they know that it had been vacated by January 01, 2010.

The Landlords and the Tenants agree that the Tenants did not pay any rent for December of 2009.

### Analysis

I find that the Tenants entered into a tenancy agreement with the Landlords that required them to pay monthly rent of \$1,075.00 on the first day of each month.

Section 44(1) of the *Act* stipulates that that a tenancy ends only if the tenant or landlord gives notice to end the tenancy in accordance with sections 45, 46, 47, 48, 49, or 50 of the *Act*; if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy; if the landlord and tenant agree in writing to end the tenancy; if the tenant vacates or abandons the rental unit; if the tenancy agreement is frustrated; or if the director orders that the tenancy is ended.

As neither party gave notice to end the tenancy in accordance with sections 45, 46, 47, 48, 49, or 50 of the Act; the tenancy agreement was not a fixed term tenancy agreement; the landlord and tenant did not agree in writing to end the tenancy; the tenancy agreement was not frustrated; and the director had not ordered that the tenancy had ended, I find that this tenancy ended when the Tenants vacated the rental unit. In the absence of evidence to refute the Tenant's statement that they vacated the rental unit on December 15, 2009, I find that this tenancy ended on December 15, 2009.

Section 26(1) of the Act requires Tenants to pay rent to the Landlord. As the Tenants occupied the rental unit for the period between December 01, 2009 and December 15, 2009, I find that they are obligated to pay the equivalent of one-half of one month's rent, which is \$537.50.

I find that the Tenants failed to comply with section 45 of the *Act* when they failed to provide the Landlords with written notice of their intent to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due. To end this tenancy in accordance with the Act, the Tenants were obligated to serve the Landlord with written notice of their intent to vacate the rental unit on a date that is not earlier than one month after the date the Landlord receives the notice and is the day before the day in the month that rent is due. In order for the Tenants to end this tenancy in December the Tenants were obligated to serve written notice, prior to November 31, 2009, of their intent to end the tenancy on December 31, 2009 unless they were able to enter into a mutual agreement with the Landlords, in writing, to end this tenancy on a different date.

I find that the improper notice prevented the Landlord from entering into a tenancy agreement with new tenants as they had not been provided with proper notice that this tenancy would end. I find that the Tenants' actions resulted in a loss of revenue for the Landlords for the period between December 16, 2009 and December 31, 2009, and I find that the Landlords are entitled to compensation that is the equivalent of one-half of one month's rent, which is \$537.50.

I find that the Landlords' application has merit and that the Landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

### Conclusion

I find that the Landlords have established a monetary claim, in the amount of \$1,125.00, which is comprised of \$1,075.00 in unpaid rent/loss of revenue for the month of December and \$50.00 in compensation for the filing fee paid by the Landlords for this Application for Dispute Resolution. I hereby authorize the Landlords to retain the Tenants' security deposit, in the amount of \$537.50, in partial satisfaction of the monetary claim, pursuant to section 72(2) of the *Act*.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$587.50. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims Court 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: January 15, 2010.

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Dispute Resolution Officer