

## **DECISION**

Dispute Codes       MND, MNR, MNDC, FF, SS

### Introduction

This hearing dealt with an application by the landlord for a monetary order for damage to the unit, unpaid rent, money owed or compensation for damage or loss, serve documents or evidence in a different way and recovery of the filing fee. The landlord participated in the conference call hearing but the tenants did not. The landlord presented evidence that the tenants were served with the application for dispute resolution and notice of hearing in person. I found that the tenants had been properly served with notice of the landlord's claim and the date and time of the hearing and the hearing proceeded in their absence.

### Issues to be Decided

Is the landlord entitled to any of the above under the Act.

### Summary of Background and Evidence

This fixed term tenancy started September 1, 2010 with monthly rent of \$1800.00, the tenants paid a security deposit of \$900.00. On September 30, 2010 the tenants notified the landlord by telephone that they would be vacating the rental unit October 1, 2010.

The landlord testified that the tenants had signed a fixed term tenancy agreement, did not fulfill the agreement and vacated the rental unit without providing 1 months notice as required by the Act. The landlord stated that one of the tenants did participate in a move-out inspection and that during the inspection it was noted that there was a stain on the carpet. The landlord was not able to re-rent the unit until December of 2010 and seeking compensation for two months rent: September 2010, November 2010, \$100.00 in carpet cleaning and recovery of the fee to bring this application forward.

### Law

#### Residential Tenancy Act **Section 45 Tenant's notice**

*(2) A tenant may end a fixed term 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,*

*(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*

- (c) 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.*
- (4) A notice to end a tenancy given under this section must comply with section 52 [form and content of notice to end tenancy].*

**Residential Tenancy Act Section 52 Form and content of notice to end tenancy**

*In order to be effective, a notice to end a tenancy must be in writing and must*

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*

Analysis

The tenants entered into a fixed term tenancy that was to end June 30, 2011 and then on September 30, 2010 gave the landlord 1 days notice by telephone; both of these actions by the tenants are in direct contravention of the Act. Based on the documentary evidence and undisputed testimony of the landlord, I find on a balance of probabilities that the landlord has met the burden of proving that they have grounds for entitlement to a monetary order for unpaid rent and carpet cleaning costs.

I find that the landlord has established a claim for \$3700.00.

The landlord is also entitled to recovery of the \$50.00 filing fee.

Conclusion

I find that the landlord has established a monetary claim for \$3700.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's \$900.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$2850.00** (\$3700.00+\$50.00=\$3750.00-\$900.00=\$2850.00)

A monetary order in the amount of **\$2850.00** has been issued to the landlord and a copy of it must be served on the tenant. If the amount 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: January 28, 2011

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Residential Tenancy Branch