



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNSD, MNR FF

### Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, to enforce a tenancy agreement, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on September 23, 2010. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both the Tenant and the Landlord in attendance.

### Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to enforce the tenancy agreement?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Is the Landlord entitled to keep the Tenant's security deposit?

### Background and Evidence

This tenancy started on October 1, 2010, but an early move in date of September 15, 2010 was agreed to by the parties. The Tenancy was a 6 month fixed term tenancy with an expiry date of March 31, 2010. Rent was \$1,150.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$575.00 on August 19, 2010.

The Landlord said that the Tenant moved in on September 14, 2010 and moved out on September 15, 2010 and did not pay the September 2010 rent of \$575.00. As well the Landlord said the Tenant breached the 6 month fixed term tenancy agreement by moving out prior to the end of the tenancy agreement.

The Landlord continued to say that the Tenant did not give her a forwarding address and she did not hear from the Tenant after September 15, 2010 when he returned the

keys and told her he was not moving into the unit. The Landlord said she immediately advertised the unit for rent and she rent the unit on October 15, 2010.

The Landlord said she is claiming for the unpaid rent for September, 2010 of \$575.00 and the full rental amount for the fixed term of the lease of 6 months X \$1,150.00per month = \$6,900.00, plus the \$100.00 filing fee for this proceeding. The Landlord said her total claim is for \$7,575.00.

The Tenant said he changed his mind about moving into the unit because he believed the Landlord breached the tenancy agreement. He said there was no stove with an oven in the unit. He said he had requested this of the Landlord in a note to the Landlord dated September 2, 2010. The Landlord said the unit was rented with a cook top stove and the Tenant saw it when he signed the tenancy agreement on August 19, 2010.

The Tenant continued to say the Landlord did not make the share payment of the utilities clear when he signed the tenancy agreement in August so he believed his share went from  $\frac{1}{2}$  the utility bill to  $\frac{3}{4}$  of the utility bill. The Tenant said this was grounds to terminate the agreement.

The Tenant also said the Landlord did not tell him a bachelor was living in the unit above the rental unit and his family thought this was not appropriate for a family rental unit as the laundry facilities would be shared and therefore the bachelor would have access to the basement common area. The Tenant said this was grounds enough to break the tenancy agreement.

### Analysis

A fixed term tenancy agreement is a contract that gives both the Tenant and the Landlord specific obligations and it has a time period that the obligations are required for. Section 16 of the Act say the rights and obligations of a tenancy agreement take effect when the agreement is entered into whether or not the Tenant ever occupies the unit or not. I find that there is a valid tenancy agreement signed and a security deposit was paid to secure the agreement therefore I find the Tenant is responsible for his obligations under the tenancy agreement.

As well I find the breach of tenancy claims the Tenant has made with respect to the unit having no stove with an oven, the bachelor living in the upstairs unit and the dispute about the share of the utility bill are not material breaches of the tenancy agreement and therefore do not establish grounds to cancel the tenancy agreement. I find the tenancy agreement is valid.

In addition Section 7.2 of the Act says that a party that claims compensation under the Act must do whatever is reasonable to minimize the damage or loss they have. The

Landlord said she advertised the unit immediately after the Tenant moved out and she was able to rent the unit to a new Tenant starting October 15, 2010. I find the Landlord acted responsibly and did minimize her loss, therefore I find for the Landlord, for compensation for the rental of the unit from September 15, 2010 to October 15, 2010 in the amount of \$1,150.00.

As the Landlord has been partially successful in this matter, she is also entitled to recover from the Tenant the \$100.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 1,150.00
	Recover filing fee	<u>\$ 100.00</u>
	Subtotal:	\$ 1,250.00
Less:	Security Deposit	<u>\$ 575.00</u>
	Subtotal:	\$ 575.00
	Balance Owing	\$ 675.00

### Conclusion

A Monetary Order in the amount of \$675.00 has been issued to the Landlord. A copy of the Orders must be served on the Tenant: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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 25, 2011.

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Residential Tenancy Branch