

## **DECISION**

Dispute Codes        MNSD, MNDC, FF

### Introduction

This hearing dealt with an application by the landlord to keep all or part of the security deposit, money owed or compensation for damage or loss 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 documents. 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 November 1, 2010 with monthly rent of \$1200.00, the tenants paid a security deposit of \$600.00 and a pet damage deposit of \$600.00.

The landlord testified that the tenants entered into a fixed term tenancy agreement with the landlord and completed a move-in inspection with the landlord. On October 15, 2010 the tenant called the landlord advising her that the tenants would not be moving into the rental unit due to financial hardship. On October 16, 2010 the tenant sent the landlord an email as their written notice.

The landlords have had to take steps to ensure that the house was winterized due to it's location and being un-occupied. The landlord has submitted evidence that they have been advertising for new tenants in seven different publications: Kijji, Facebook, Used Victoria, Used Prince George, Used Toronto, Used Calgary and Hwy 16.com classifieds.

The landlords are seeking a monetary order for \$1200.00 compensation for lost rent for the month of November 2010.

## Law

### Residential Tenancy Act **Section 16 Start of rights and obligations under tenancy agreement**

*The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.*

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

*(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.*

*(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.*

*(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.*

*(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,*

*(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and*

*(e) when given by a landlord, be in the approved form.*

## Analysis

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.

I find that the landlord has established a claim for \$1200.00 in unpaid rent.

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 \$1200.00 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 \$600.00 security deposit and \$600.00 pet damage deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$50.00**

A monetary order in the amount of **\$50.00** 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: February 9, 2011

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Residential Tenancy Branch