



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

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

The Landlord said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on October 20, 2010. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlord and the Tenant in attendance.

### Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Is the Landlord entitled to keep the Tenants' security deposit?

### Background and Evidence

This tenancy started on November 1, 2009 as a 1 year fixed term tenancy with an expiry date of October 31, 2010. Rent is \$1,500.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$750.00 on October 9, 2009. The Tenants moved out to the rental unit on August 31, 2010.

The Landlord said that the Tenants gave written notice on July 19, 2010 that they were moving out effective August 31, 2010. He continued to say the Tenants actually moved out on August 16, 2010. It is the Landlord's contention that the Tenants breach of the fixed term tenancy agreement, which ended October 31, 2010. The Landlord said the Tenants owe the rent of \$1,500.00 for September, 2010 and the rent of \$1,500.00 for October, 2010 as stated in the tenancy agreement. The Landlord continued to say that he tried to rent the unit for September 1, 2010, but was unable to rent it until November 15, 2010 at a reduced rental amount of \$1,250.00. The Landlord said he

showed the unit 4 times, advertised the unit on the internet and in the local newspaper from July 31, 2010 until November, 2010.

In addition the Landlord said he had discussions with the Tenant that gave him the understanding that the Tenants understood they were responsible for the rent until the end of the tenancy agreement, October 31, 2010. The Landlord said he wrote a letter to the Tenants dated September 21, 2010 to confirm the rent for September was unpaid and that the Tenants' were responsible for both September and October, 2010's rent. The Landlord said he did not indicate to the Tenants that the tenancy agreement changed from a fixed term agreement to a month to month agreement.

The Tenant said he believes the Landlord changed the tenancy agreement from a fixed term to a month to month agreement when the Landlord told him by telephone on May 7, 2010, that the owner of the rental unit had it up for sale and if it sold the Tenant would have to move out in two months. He also said the Landlord said there would be some monetary compensation for the early end to the tenancy agreement. The Tenant said that the unit was listed for sale in March 2010. The Tenant continued to say that they believed this discussion with the Landlord changed the tenancy by giving them verbal notice of what would happen if the property sold. As a result they gave their 1 month notice to end the tenancy in accordance with a month to month tenancy. The Tenant continued to say that he does not believe they owe the Landlord rent of \$1,500.00 for each month of September, 2010 and October, 2010 as they serviced the Landlord with proper written notice to end the tenancy for a month to month tenancy.

The Landlord said he did discuss the potential of the rental unit selling with the Tenants, but he said if the rental unit sells the Landlord and the Tenants would have to come to a mutual agreement to end the existing tenancy agreement in accordance to a fixed term tenancy agreement. The Landlord said he never indicated the tenancy had changed from a fixed term agreement.

In addition the Landlord said he showed the rental unit 4 times, advertised it in the paper and on internet. He said he had to reduce the rent to attract a new tenant. The unit was rented November 15, 2010.

### Analysis

This dispute is focused on whether the tenancy is a fixed term agreement as the Landlord says or if it was changed to a month to month agreement as the Tenant says. Both the Tenant and the Landlord agree the tenancy started as a fixed term ending on October 31, 2010. The Tenant's evidence from his testimony says that a discussion with the Landlord on May 7, 2010 lead him to believe the tenancy changed to a month to month agreement because the property was up for sale. As a result the Tenant believed he could give a one month notice to end the tenancy under the month to month tenancy guidelines. The Tenant also said that he did not receive anything in writing from the Landlord changing the tenancy or ending the tenancy due to the sale of the rental unit.

The Landlord said he did not indicate any changes to the tenancy agreement to the Tenants verbally or in writing. He continued to say that the Tenant's letter of July 19, 2010 requesting his best efforts to rent the unit for September 1, 2010 and the Landlord's letter of September 21, 2010 confirming the fixed terms of the tenancy are evidence that the Landlord and Tenant did not agree on any changes to the tenancy agreement.

Section 14 (2) of the Act says a tenancy agreement may be amended only if the landlord and the tenant agree to the amendment.

Section 44 of the Act says that a fixed term tenancy ends on the date specified in the tenancy agreement as the end of the tenancy or by agreement in writing between the landlord and the tenant.

As the Landlord and Tenant did not agree to amend the tenancy agreement and there is no evidence that the tenancy agreement was changed the tenancy agreement dated October 9, 2009 stands in full effect for the tenancy. The Tenants have not established grounds that the tenancy changed to a month to month agreement and as a result their claim that their 1 month notice is valid is dismissed.

Section 26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has the right under this Act to deduct all or a portion of the rent.

and

Section 7(2) of the Act says a landlord or tenant who claims compensation must do whatever is reasonable to minimize the damage or loss claimed.

The Tenant does not have the right under the Act to withhold part or all the rent and the Tenant has not established grounds to withhold part or all of the rent for September, 2010 and October, 2010. The Landlord has established that he advertised and showed the rental unit from July 31, 2010 until it was rent in November, 2010 therefore; I find for the Landlord and grant his claim for compensation of \$1,500.00 of unpaid rent for September, 2010 and \$1,500.00 of unpaid rent for October, 2010.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenants the \$50.00 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 in partial payment of the rent and utility arrears. The Landlord will receive a monetary order for the balance owing as following:

	September, 2010 rent	\$1,500.00
	October, 2010 rent	\$ 1,500.00
	Recover Filing Fee	<u>\$ 50.00</u>
	Subtotal	\$3,050.00
Less	Security Deposit	<u>\$ 750.00</u>
	Balance Owing	<u>\$2,300.00</u>

### Conclusion

A Monetary Order in the amount of \$2,300.00 has been issued to the Landlord. A copy of the Orders must be served on the Tenants; 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*.

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Residential Tenancy Branch