



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD, & FF

### Introduction

This hearing dealt with the landlord's application seeking monetary relief due the tenant's breach of the fixed term tenancy agreement. The landlord also seeks to retain the tenant's security deposit plus interest in partial satisfaction of this claim.

The landlord appeared and provided affirmed oral testimony. The landlord also provided documentary evidence in advance of this proceeding in accordance with the rules of procedure.

I accept the evidence provided by the landlord that the tenant provided a forwarding address in writing on September 14, 2010. The landlord provided evidence showing that the tenant was served with notice of this application, notice of hearing and evidence by registered mail on October 21, 2010.

Based on the documentary evidence provided by the landlord, I am satisfied that the tenant was served with notice of this proceeding by registered mail and I deem that the tenant received notice on the fifth day after the registered mail was sent pursuant to section 90(a) of the *Act*.

I proceeded with the hearing in the tenant's absence.

### Issue(s) to be Decided

Did the tenant breach the fixed term tenancy entitling the landlord to monetary relief?

Is the landlord entitled to retain the tenant's security deposit?

### Background and Evidence

The parties entered into a fixed term tenancy commencing on April 1, 2010 and ending on March 31, 2011 for the monthly rent of \$1,300.00 due on the 1<sup>st</sup> of each month. The

tenant paid a security deposit of \$650.00 on March 30, 2010 and a move in condition inspection of the rental unit was completed by the parties on April 2, 2010.

The landlord testified that the tenant's father called on August 26, 2010 to terminate the tenancy early. The landlord stated that in response to the early termination of the tenancy, they sent the tenant information regarding preparing for moving out of the rental unit. The landlord conducted the move out condition inspection on September 1, 2010. The tenant did not attend and the landlord testified that they were unable to contact the tenant because no contact information or forwarding address had been provided.

On September 14, 2010 the landlord received the tenant's forwarding address in writing with a request that the security deposit be returned. In response the landlord filed this application and seeks the following claim in damages suffered as a result of the tenant's breach of the tenancy agreement:

Unpaid rent for September 2010 as the tenant failed to provide 30 days written notice to end the tenancy	\$1,300.00
Recovery of the move in and move out fees charged to the landlord by the strata council	\$100.00
Recovery of the cost to have the carpets cleaned in the rental unit	\$110.88
Recovery of the filing fee paid for this application	\$50.00
<b>TOTAL</b>	<b>\$2,288.88</b>

In support of the amounts claimed the landlord provided copies of the receipts from the strata council and for the carpet cleaning. The landlord also provided a copy of the tenancy agreement containing the early termination clause.

The landlord seeks to retain the tenant's security deposit in partial satisfaction of this claim. The landlord argued that the tenant extinguished his right to the return of his security deposit by failing to provide a means to contact him to arrange the move out condition inspection and by failing to attend the move out condition inspection.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard. To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

First proof that the damage or loss exists, secondly, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, thirdly, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and lastly proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I accept the landlord's claim for loss of rent for September 2010 in the amount of \$1,300.00. The tenant is required by section 45 of the *Act* to provide 30 days written notice to end a tenancy and notice must be received before the day that rent is owed. I accept that an agent of the tenant gave notice on August 26, 2010, so the effective end of the tenancy is September 30, 2010.

I also accept the landlord's claim for liquidated damages due to the tenant breaking the fixed term lease; however, I only grant the landlord the sum of \$650.00 as determined by the tenancy agreement. It was not agreed upon at the start of the tenancy that it would be the equivalent of half a month's rent plus tax.

Pursuant to section 7(1)(f) of the Regulations the landlord is entitled to charge the tenant move in and move out fees charged by a strata corporation. I accept the evidence of the landlord that these fees were charged and find that the tenant is to reimburse the landlord this expense.

Finally, I grant the landlord's request to recover the cost of cleaning the carpets in the rental unit in the amount of \$110.88 as it is a term of the tenancy agreement signed by the tenant.

I find that the landlord has established a total monetary claim in the amount of \$2,288.88. From this sum I Order that the landlord may deduct the tenant's security deposit in partial satisfaction leaving a balance owing of **\$1,638.88**.

### Conclusion

I find that the landlord has established a monetary claim due to breach of the tenancy agreement by the tenants for the sum of **\$26.15**. This Order may be served on the

tenants. This Order may be 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: February 18, 2011.

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Residential Tenancy Branch