



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      OPB MND MNR FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for breach of an agreement, and to obtain a Monetary Order for unpaid rent, damage to the unit site or property, and to recover the cost of the filing fee from the Tenants.

Service of the hearing documents, by the Landlord to the Tenants, was done in accordance with section 89 of the *Act*, served in person to each tenant on January 26, 2010.

The Landlord appeared at the teleconference hearing, was provided the opportunity to present his evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain an Order of Possession and a Monetary Order as a result of that breach?

### Background and Evidence

The Landlord testified that he entered into a written tenancy agreement with a woman effective December 1, 2010; however this woman did not move in. Instead the woman's boyfriend, Tenant (1), occupied the unit as of December 1, 2010. The Landlord stated that he told the Tenant to find other roommates to move in and share the monthly rent of \$1,250.00, with him. He said he advised the Tenant that he would not do checks on these other people and would enter into a written agreement with them in February 2011.

The Landlord advised that Tenant (1) allowed the other two people named in this dispute to move in the house. He states they were all drug users however Tenants (2) and (3) acted like gentlemen. When he filed his application for dispute resolution and realized he was not going to get a hearing sooner he entered into mutual agreements to end the tenancy with each of the Tenants and all three Tenants had vacated the property on or before January 31, 2011.

The Landlord has withdrawn his request for an order of possession and is now seeking a monetary order in the amount of \$886.93 against only Tenant (1). He argues that Tenant (1) did not pay his rent for December 2010 or January 2011 for \$525.00 each month. He confirmed he issued a 10 Day Notice to End Tenancy however he could not provide testimony of when he served the Notice. I asked how much money he received in December 2010 for rent and he was not able to provide testimony as to the amount received or the date received but said it was \$1,250.00 less \$475.00. I then asked how much money he was paid for January 2011 rent and he was not able to provide an amount received or the date he received it and again he said he was paid \$1,250.00 less \$475.00.

The Landlord later clarified that Tenants (2) and (3) had their rent paid directly from income assistance to him so he confirms their rent was paid. When I asked how much was paid he stated that rent was 3 times \$375.00 so they each must have paid \$375.00.

The Landlord is seeking to keep the security deposit of \$625.00 that Tenant (1) paid December 1, 2010 because Tenant (1) damaged the front door and back gate. He said Tenant (1) would come home drunk and kick in the door and the back gate.

### Analysis

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and

2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The Landlord is seeking monetary compensation for unpaid rent however he is not able to provide accurate testimony of when or how much rent was collected. He contends that he only had a verbal tenancy agreement with Tenant (1) and that he did not have agreements with Tenants (2) and (3); however he was being paid Tenants (2) and (3)'s rent directly from income assistance which means he would have had to have entered into an agreement to rent to these two Tenants.

The Landlord provided a copy of a 10 Day Notice to End Tenancy issued January 21, 2011 to Tenant (1) for the amount of \$525.00; however he was not able to provide testimony of when it was served to Tenant (1). When asked how much rent was paid by the Tenants for December and January the Landlord further contradicted his own testimony when he said he received \$1,250.00 less \$475.00 when he is seeking \$525.00 as the outstanding amount. He further contradicted his own testimony when he stated the rent was 3 times \$375.00 per person. In the presence of so many contradictions I find the Landlord has provided insufficient evidence to support his claim for unpaid rent and the claim is dismissed without leave to reapply.

The Landlord seeks \$400.00 for damages to the front door and back gate. These damages have not been repaired nor has the Landlord submitted evidence that these damages exist. There is no evidence that a copy of a move-in or move-out inspection report were completed by the Landlord. Therefore in the absence of sufficient evidence that damage occurred during this tenancy and was caused by Tenant (1), or proof of the actual amount required to repair the alleged damages, I hereby dismiss the Landlord's claim of \$400.00.

The Landlord testified that there were further amounts owing to him from these Tenants however there is no evidence to support this claim.

Based on the above, I find the Landlord has not met the burden of proof to establish his monetary claim and the claim is dismissed. Therefore, I find the Landlord must bear the burden of the cost to make his application.

Having dismissed the Landlord's claim, I find the Landlord is not entitled to retain the Tenants' security deposit. Therefore, if the Landlord receives the Tenants' forwarding

address, in writing, he must return the security deposit plus any accrued interest to the Tenants in accordance with section 38 of the Act.

I have included in the Landlord's decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the Landlord to familiarize himself with his rights and responsibilities as set forth under the *Residential Tenancy Act*.

### Conclusion

I HEREBY DISMISS the Landlord's application, without leave to reapply.

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 21, 2011.

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Residential Tenancy Branch