



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes                      MNR, MNDC, FF, O

### Introduction

This matter dealt with an application by the landlord for a Monetary Order for unpaid rent and for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was hand delivered to the tenant on December 02, 2010.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

Both parties agree that this tenancy started on May 11, 2010. Rent for this unit was \$2,250.00 per month and was due on the 1<sup>st</sup> day of each month in advance.

The landlord testifies that this was a fixed term tenancy which was due to expire on May 31, 2011. The landlord states he made an error on this date on the tenancy agreement by putting the expiry date as of May 31, 2010. He states he altered his copy of the tenancy agreement to reflect this error but did not consult the tenant or change the date on her copy of the agreement.

The landlord testifies that the tenant moved from the rental unit on October 09, 2010 after he served her with a 10 Day Notice to End Tenancy for unpaid rent for September, 2010. The tenant filed an application to cancel the 10 Day Notice for unpaid rent and a hearing was held on September 29, 2010. The landlord states at that hearing an agreement was reached with the tenant as follows:

1. The tenant agrees to pay the landlord's property manager no later than the close of business on Thursday, September 30, 2010 the full rent owed for the month of September 2010 by cash, bank draft, or money order;
2. The tenant agrees to pay the landlord's property manager no later than the close of business on Friday, October 1, 2010 the full rent owed for the month of October 2010 by cash, bank draft, or money order; and
3. Should the tenant fail to make either or both payments, she agrees to vacate the rental unit.

The landlord also received an Order of Possession at that hearing which he served upon the tenant. The landlord testifies the tenant failed to make either payment and left the rental unit on October 09, 2010. The landlord testifies that he now also seeks to recover unpaid rent for November, 2010 as the tenant ended the tenancy before the end of the fixed term and he was unable to re-rent the unit until December 01, 2010 despite advertising it for rent in three different locations. The landlord seeks to recover unpaid rent for September, October and November to the sum of \$6,750.00.

The landlord testifies that after the tenant moved out he had the BC Hydro put into his name and asked them for an estimate of the charges up to the time the tenant vacated the unit. He was told by BC Hydro that it would be around \$90.58 however when the bill came the charges were only \$13.72. The landlord has not provided a copy of this bill in evidence and states he no longer wishes to pursue the tenant for this sum.

The landlord seeks to recover \$50.00 for two returned rent cheques issued by the tenant. He seeks to recover an additional \$40.00 in administrative fees dealing with these cheques and \$200.00 in administrative fees charged by his agent. The landlord has provided no evidence of these fees charged

The landlord seeks to recover \$50.00 filing fee for the previous hearing and the \$100.00 filing fee for this hearing.

The tenant testifies that she does not dispute that she owes rent to the landlord as previously agreed at the hearing on September 29, 2010 but the tenant does dispute the landlords claim for unpaid rent for November, 2011 as she states the landlord advertised the unit for rent at an inflated rent of \$2,600.00, therefore the landlord took longer to re-rent the unit and the tenant should not be held responsible for this. The tenant also states she had to move from the rental unit as the landlord had an Order of Possession. At first the tenant states she moved from the unit on September 08, 2010 but upon questioning she agreed she still had belongings in the unit until October 09, 2011 and was residing there when the previous hearing took place on September 29, 2010.

The tenant agrees that two rent cheques were returned by her bank. One of these she states was a bank error and they refunded any charges she would have incurred. The tenant agrees that she did not pass this refund on to the landlord.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I find that both parties did reach an agreement at a previous hearing that the tenant would pay the outstanding rent for September and October, 2010 by the agreed upon dates and the tenant agrees that she did not fulfill this agreement. When an agreement has been recorded by a Dispute Resolution Officer at a hearing this agreement is in full and final settlement of a claim and can be upheld by the Parties. In this case the tenant has not upheld her side to the agreement and therefore I find the landlord is entitled to recover unpaid rent for September and October, 2010 of **\$4,500.00** pursuant to s. 67 of the *Act*.

With regard to a loss of rental income for November, 2010; I have considered the fact that the landlord altered the date on the tenancy agreement without the consent of the tenant. However, this alteration has no effect on my decision that the tenant did not pay rent for September and October as she had agreed to pay these sums at a previous hearing and continued to live in the unit until October 09, 2010. Even if this tenancy was deemed to be a month to month tenancy due to the alteration of the end date of the tenancy on the landlords copy of the tenancy agreement. The Residential Tenancy Policy Guidelines #3 states: *In a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month.* This guideline also states: *In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation.* It is my decision that the landlord advertised the unit at an inflated rent above the amount the tenant was paying for the unit and therefore I find the landlord did not mitigate his loss in this matter by seeking a higher rent which may have been a deterrent to potential tenants. Consequently, this section of the landlords claim is dismissed.

With regard to the landlords claim for bank charges for two returned cheques; the tenant does not dispute that two rent cheques given to the landlord were returned and therefore I find the landlord is entitled to recover the sum of **\$50.00** for costs incurred due to bank charges pursuant to s. 67 of the *Act*.

With regard to administrative fees charged by the landlord for dealing with the returned checks and other administrative fees of \$200.00 incurred by the landlord to pay his management company. It is my decision that any administrative fees incurred by the landlord are a normal cost of doing business and therefore I dismiss this section of the landlords claim.

With regard to the landlords claim for a filing fee for a previous hearing of \$50.00; the previous hearing that was held was to hear the tenants' application for dispute resolution and therefore the landlord would not have paid a filing fee. Consequently, this section of his claim is dismissed

With regard to the landlords claim for his \$100.00 filing fee for this application; as the landlord has been partially successful with his claim I find he is entitled to recover his filing fee from the tenant of **\$100.00** pursuant to s. 72(1) of the *Act*.

A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent September and October, 2010	\$4,500.00
Subtotal	\$5,000.00
Plus filing fee	\$100.00
Total amount due to the landlord	\$5,100.00

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$5,100.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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: April 01, 2011.

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Residential Tenancy Branch