



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

**Dispute Codes:** MNR, MNSD, MNDC

### **Introduction**

This hearing was convened in response to an application filed by the landlord seeking:

1. A monetary order for unpaid rent;
2. A monetary order for damage and/or compensation;
3. An order to be allowed to retain the security deposit; and
4. A monetary order to recover the filing fee paid for this application.

The tenants did not appear.

The landlord gave evidence that he served the tenant with the Application for Dispute Resolution hearing package by way of personal service on the tenants on or about December 16, 2010. The landlord submitted that the tenants did not pay December's rent so the landlord attended the rental unit to seek the rental payment directly from the tenants. The landlord testified that he discovered that the tenants were in the process of vacating. The landlord says he therefore filed this Application for Dispute Resolution on December 15, 2010 and served the tenants with this Application in person at the rental unit. I will accept the testimony of the landlord and find that the tenants were served with the Application for Dispute Resolution in person as testified.

The landlord gave evidence under oath.

### **Summary of Background**

The landlord testified that this tenancy began on or about July 7, 2010 for a fixed term of one year and 7 days ending June 30, 2011. Rent was fixed at \$1,350.00 per month and the tenants paid a security deposit of \$675.00 on July 7, 2010. As set out above, the landlord testified that he did not receive rent for December and he attended the rental unit to discover the tenants in the process of vacating. The landlord testified that he was armed with an Application for Dispute Resolution which he served on the tenants at that time. In that Application the landlord seeks the following:

Retain security deposit "...because the tenants broke their lease and our clients will have to pay to have the place filled again"	675.00
Lost rent for December	1,300.00
Lost rent for January and February	2,600.00
Recovery of the filing fee	50.00
Total	4,625.00

In the Application for Dispute Resolution the landlord seeks \$3,950.00 "...+ security deposit" but lists the total amount sought as \$3,950.00.

The landlord testified that December is a very difficult time of year in Peachland, British Columbia [the location of the rental unit] to secure tenants. The landlord did not testify as to the specific steps taken in his attempt to re-rent the premises. The landlord testified that he did not provide evidence of the advertisements he placed or other steps taken. The landlord testified that because advertisements had to be renewed every 10 days he would only have been able to produce the February 2011 advertisement so chose not to submit this into evidence or any other documentary evidence with respect to mitigation. The landlord submitted that he is a property manager charged with the task of securing tenants for his clients. He questioned why he would not take steps to do so. He submitted that he has been in approximately 100 Residential Tenancy Branch hearings and has not had to supply evidence of mitigation previously.

### **Analysis and Findings**

The Act requires a tenant to give 30 days' written notice prior to vacating a rental unit. In absence of the tenants' evidence to the contrary I will rely on the landlord's evidence and find that the tenants vacated the rental property in mid December 2010 without paying December's rent and without giving sufficient or proper notice. I therefore find that the landlord is entitled to rent for the notice period in the sum claimed. On this point, although the tenancy agreement states that rent is \$1,350.00 per month, the landlord has claimed \$1,300.00 for December's rent. As this is the sum noted in the Application served on the tenants and the sum of which they have had notice, this is the sum I will award.

With respect to loss of rental income for January and February 2011, the landlord did not submit any documentation of his attempts to re-rent the premises. He submits that he is in the business of property management and thus it should be assumed he would

make such attempts. However, all landlords, whether property managers or not, are in the business of renting their properties and when landlords make claims for loss of rental income they must also meet the burden of proving that they mitigated their damages by attempting to re-rent the premises as soon as possible. Based on the lack of documentary evidence submitted I am not satisfied that the landlord took sufficient steps to re-rent the premises. The landlord's claims for loss of revenue for January and February 2011 are therefore dismissed.

With respect to the landlord's claim to retain the security deposit "...because the tenants broke their lease and our clients will have to pay to have the place filled again". The tenancy agreement submitted in evidence does not contain a clause for liquidated damages. I therefore decline to award this sum. However, having awarded the landlord the sum of \$1,300.00 for December's rent, I will use the offsetting provisions of the *Residential Tenancy Act* and apply the security deposit to the award made.

With respect to the landlord's claim for recovery of the filing fee, having been partially successful in his claim I will award the landlord \$25.00.

## Conclusion

I will make an Order in favour of the landlord as follows:

Rental Arrears for Notice period	\$1,300.00
Filing Fees for the cost of this application	25.00
Less Security Deposit (paid July 7, 2010 - no interest accrued)	-675.00
Total Monetary Award in favour of Landlord	\$650.00

The landlord is provided with a formal Order in the above terms. The tenant must be served with a copy of the order as soon as possible. Should the tenant fail to comply with the Order the Order may be filed and enforced as an Order of the Provincial Court of British Columbia.

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