



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**MNDC, MNSD, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for compensation for unpaid rent and utilities, to retain all or part of the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the testimony provided.

### Preliminary Matter

The landlord submitted one page of evidence; the tenant testified that he did not receive this evidence. The landlord confirmed that her brother served the tenants with Notice of this hearing by leaving the documents with the occupants of the upper unit; the tenant's daughter was then given the documents. The daughter then gave the hearing package to the tenants.

I determined that the evidence was not served to the tenants; however, I found that the tenants were sufficiently served with Notice of this hearing in March, when their daughter gave them the Notice.

### Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$2,541.60 in unpaid rent and utilities?

May the landlord retain the deposit?

Is the landlord entitled to filing fee costs?

## Background and Evidence

During the hearing the parties agreed to the following facts:

- The tenancy commenced in November 2002;
- The tenants paid a deposit in the sum of \$375.00 at the start of the tenancy;
- The landlord sold her rental unit property effective December 31, 2010;
- Effective January 1, 2011, the landlord became a tenant, as part of an agreement with the new owners of the rental property; and
- That the landlord continued to collect rent payments from her previous tenants.

The landlord confirmed that she was not acting at this hearing as agent for the new owners nor has she acted as agent in relation to any tenancy with the respondents.

The landlord was claiming unpaid rent and utilities owed for 2010, plus rent and utilities owed from January 2011 to March, 15, 2011; when the tenants vacated the rental unit.

## Jurisdiction

Once the parties raised the issue of ownership I informed them that I would consider jurisdiction, as the property had changed owners and the landlord/applicant had confirmed she was now the tenant of the property owner. The applicant did not reside in the rental unit.

The Act defines a landlord as follows:

*"landlord", in relation to a rental unit, includes any of the following:*

*(a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,*

*(i) permits occupation of the rental unit under a tenancy agreement, or*

*(ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;*

*(b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);*

*(c) **a person, other than a tenant occupying the rental unit, who***

*(i) is entitled to possession of the rental unit, and*

*(ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;*

*(d) **a former landlord, when the context requires this***

(Emphasis added)

From the evidence before me I find that the effective January 1, 2011, the applicant met the definition of tenant as she no longer owned the property and entered into a rental

agreement with the new property owners. However, Notice had not been given to her tenants; therefore, she was not entitled to possess the rental unit.

The applicant does not reside in the home, but did accept responsibility for the rental of the property by entering in to a tenancy agreement. The applicant has confirmed she is not acting as agent for the property owner.

From the evidence presented in the hearing, I find that no tenancy agreement existed between the respondents in the application and the new property owner. I find that the definition of former landlord does not apply in this case, as a result of the landlord's actions, which altered the original agreement with her tenants. Therefore, I find, effective January 1, 2011, the applicant's tenants are both considered "Occupants" as defined in the *Residential Tenancy Policy Guideline Manual*, section 13: Rights and Responsibilities of Co-Tenants:

### **Occupants**

Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

Therefore, I will consider the applicant's claim up to December 31, 2010 and I dismiss the claim for compensation beyond December 31, 2010, as I decline jurisdiction beyond that point.

### **Background and Evidence**

The tenants acknowledged during the hearing that they had paid a total of \$9,786.00 to the landlord during 2010. The tenants also acknowledged that they owed \$800.00 per month rent plus \$136.00 in utility costs each month during 2010.

The landlord has claimed a loss in the sum of \$541.60 for 2010.

The landlord testified that the new property owners have held the deposit; however the landlord has applied to retain the deposit in partial satisfaction of her claim.

### **Analysis**

Based on the evidence before me I find that the landlord is entitled to compensation for unpaid rent and utilities in 2010 in the sum indicated on her application; \$541.60. The tenants have acknowledged there were rent and utility arrears.

I find that the tenancy ended on December 31, 2011, at which point the tenants became occupants and the landlord assumed the tenancy. I have declined jurisdiction for the 2011 loss claimed.

I find that the landlord is holding a deposit plus interest in the sum of \$388.27 and that the deposit may be retained by the landlord in partial satisfaction of the claim.

When the landlord assumed the tenancy she was responsible for payment of any deposit to the new property owners and the deposit held since 2002 continued to be held in her trust until it could be disbursed as provided by the Act.

I find that the landlord's application has merit, and that the landlord is entitled to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

### Conclusion

I find that the landlord has established a monetary claim, in the amount of \$591.60, which is comprised of unpaid rent and utilities owed in 2010 and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

I have declined jurisdiction for the portion of the claim beyond December, 31, 2010.

The landlord will be retaining the tenant's security deposit plus interest, in the amount of \$388.27, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$203.33. In the event that the tenants do not comply with this Order, it may be served on the tenants, 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: June 22, 2011.

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Residential Tenancy Branch