



# 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 damage or loss; unpaid rent, 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, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Preliminary Matter

The 3 tenants were present but had the use of one telephone line. The tenants agreed they would have 1 representative, who was free to consult with the other respondents, as required, throughout the hearing.

### Issue(s) to be Decided

Is the landlord entitled to compensation for loss of May, 201, rent revenue; liquidated damages, unpaid utilities and May, 2011, late fee in the sum of \$2,595.88?

May the landlord retain the deposit in partial satisfaction of the claim for compensation?

Is the landlord entitled to filing fee costs?

### Background and Evidence

A copy of the fixed term tenancy agreement was supplied as evidence; the tenancy commenced on January 1, 2011 and was to end June 30, 2011; when the tenants were to vacate.

Rent was \$2,100.00 per month, due on the first day of each month. A deposit in the sum of \$1,050.00 was paid at the start of the tenancy. The agreement included a \$350.00 liquidated damages clause, should the tenant end the fixed term tenancy.

A move in condition inspection report was completed; the tenants stated they did not receive a copy of that report. The parties agreed that on April 18, 2011, a move-out condition inspection report was completed.

The tenants did not dispute the claim for cleaning of the stove in the sum of \$45.53 and the water bill to the end of the tenancy in the sum of \$75.35.

The tenants gave Notice to end the tenancy effective April, 2011. The landlord commenced advertising in March, 2011 and located new occupants effective June 1, 2011. The landlord has claimed loss of May, 2011, rent revenue in the sum of \$2,100.00.

The tenants testified were not aware they could have assisted in locating new occupants, but were aware that they were responsible for the terms of the agreement until the end of the fixed term.

The landlord claimed May rent late fee in the sum of \$25.00, as provided in the tenancy agreement.

The landlord wishes to retain the deposit in partial satisfaction of the claim.

### Analysis

Section 45(2) of the Act provides:

*(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*

*(a) is not earlier than one month after the date the landlord receives the notice,*

*(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*

*(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

In other words; a tenant may not end a fixed-term tenancy prior to the end date of the tenancy agreement end.

As the tenants gave Notice that ended the tenancy prior to the tenancy agreement end date I find that the landlord is entitled to loss of May, 2011, rent revenue in the sum of \$2,100.00.

I find that the tenancy ended on April 18, 2011, when the landlord was provided possession of the rental unit.

The tenants agreed that the landlord is entitled to unpaid water fees in the sum of \$75.35; plus cleaning in the sum of \$45.53.

I dismiss the claim for late rent fees for May, 2011; as the tenancy had ended and the claim made is for loss of rent revenue.

I find that the landlord is entitled to liquidated damages in the sum of \$350.00; as provided by the tenancy agreement signed by the parties. This is a reasonable sum that reflects costs to re-rent the unit prior to the end date of the fixed term.

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

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$1,050.00, in partial satisfaction of the monetary claim.

### Conclusion

I find that the landlord has established a monetary claim, in the amount of \$2,620.88, which is comprised of \$2,570.99 in damage or loss and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit plus interest, in the amount of \$1,050.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$1,570.88. 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: August 23, 2011.

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Residential Tenancy Branch