



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for a monetary order for unpaid rent or utilities and for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit.

The parties both attended, gave affirmed testimony, and provided evidence in advance of the hearing. The landlord testified that the tenancy agreement and the move-in/out condition inspection report were provided at the time that the application was filed, however the file did not contain those documents. With the consent of the tenant, those documents were provided after the hearing concluded. The parties were also given the opportunity to cross examine each other on their evidence. All evidence and the testimony provided have been reviewed and are considered in this Decision.

The landlord also testified that the claim included damages, however, the Landlord's Application for Dispute Resolution makes no claim for damages. I find that the tenant would be prejudiced by an amendment to the Application as the tenant would not have had an opportunity to prepare for a hearing involving damages. Therefore, the hearing was limited to evidence related to the landlord's application for a monetary order for unpaid rent or utilities and the application to keep the security deposit or pet damage deposit.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord testified that this fixed-term tenancy began on May 1, 2009 and expired on April 30, 2010. The tenancy then reverted to a month-to-month tenancy. The tenancy ended after the tenant had given notice to vacate the rental unit, and the tenant actually

moved from the rental unit on June 14, 2011. Rent in the amount of \$1,700.00 per month was payable in advance on the 1<sup>st</sup> day of each month. On April 23, 2009 the landlord collected a security deposit from the tenant in the amount of \$800.00 and the landlord still holds that deposit in trust. No pet damage deposit was collected.

The landlord further testified that the tenant gave written notice on May 25, 2011 to vacate the rental premises on July 1, 2011. The landlord replied to that notice advising the tenant that rent for the month of June, 2011 was still required. A response from the tenant was subsequently received wherein the tenant stated that the landlord had ended the tenancy and therefore the tenant was not required to pay rent. The landlord testified that the property was listed for sale, but did not sell and has still not sold.

The tenant testified that there were numerous viewers of the rental unit after it had been listed for sale and believed that the landlord was required to give the tenant the equivalent of one month's rent as compensation.

The tenant also testified that the rental unit, being for sale, was no longer compatible to the needs of the tenant, and the tenant felt it was prudent to find another rental accommodation before being given notice to vacate by the landlord; the tenant did not want to scramble looking for a place to live.

### Analysis

The *Residential Tenancy Act* states that a landlord may give a tenant notice to vacate a rental unit if the conditions on which a sale have been satisfied and the purchaser requests the landlord in writing to give notice to the tenant. The landlord must then give the tenant 2 month's notice and must provide the tenant with the equivalent of one month's rent as compensation.

In this case, the tenant did not wait for an offer or for the conditions on which a sale had been satisfied before giving notice to vacate. The tenant was not given a notice by the landlord, and therefore, the tenant is required under the *Act* to pay rent until the end of the tenancy.

Further, a tenant may end a tenancy by giving one month's notice to vacate, and no reason need be given. However, the tenant is required to give that notice before the date rent is payable under the Tenancy Agreement, which in this case is the 1<sup>st</sup> of the month. The tenant did give notice prior to the first of the month of June, but is still required to pay rent for the final month of the tenancy under the *Act*.

The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the security deposit in the amount of \$800.00 and I grant the landlord a monetary order pursuant to Section 67 of the *Residential Tenancy Act* for the balance due of \$950.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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: September 28, 2011.

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Residential Tenancy Branch