



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

**MNDC, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application requesting compensation for damage or loss under the Act and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on July 15, 2011, copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant by registered mail to an address provided in writing by the tenant on June 28, 2011. A Canada Post tracking number and receipt was provided as evidence of service.

These documents are deemed to have been served on the fifth day after mailing, in accordance with section 89 of the Act; however the tenant did not appear at the hearing.

### Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$325.00?

Is the landlord entitled to filing fee costs?

### Background and Evidence

On the tenant and landlord signed a 1 year fixed-term tenancy agreement that was to commence on July 1, 2011. Rent was \$895.00 per month. The tenancy agreement included a \$300.00 liquidated damages clause which would be invoked should the tenant terminate the agreement prior to the fixed term end date. The damages were payable to cover administrative costs. The tenancy agreement contained a clause imposing a \$25.00 NSF fee. A copy of the agreement was supplied as evidence.

The tenant paid rent and a deposit by way of a cheque which was returned as NSF; a copy of the returned cheque and bank notice was supplied as evidence. The cheque was stamped as having been dishonoured.

On June 28, 2011, the landlord received a letter from the tenant indicating he would not take possession of the rental unit; the letter provided the tenant's forwarding address. The tenant did not move in; the landlord was able to locate a new occupant effective July 1, 2011. The landlord supplied copies of advertisements listing the unit for rent.

### Analysis

Section 45(3) of the Act provides:

*3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.*

The tenant did not take possession of the unit and there is no evidence before me that the landlord breached a material term of the tenancy. Therefore, I find that the tenant breached the Act by failing to meet his obligation to move into the rental unit for the agreed upon fixed term.

Liquidated damages are an agreement that the landlord will be compensated if the tenant terminates the tenancy prior to the end of the fixed term. The landlord has imposed what I find to be a reasonable cost in the sum of \$300.00, which is due to the landlord as provided by the tenancy agreement signed by the parties.

The tenancy agreement included a clause imposing a \$25.00 fee, in adherence to the Regulation. As the cheque was returned by the bank, I find that the landlord is entitled to the NSF fee.

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

### Conclusion

I find that the landlord has established a monetary claim, in the amount of \$375.00, which is comprised of \$325.00 in damage or loss and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order in the sum of \$375.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, 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: October 14, 2011.

---

Residential Tenancy Branch