



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNSD, MNR, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord seeking a Monetary Order for unpaid rent, authority to retain the tenant's security deposit, an order of possession, and to recover the cost of the filing fee from the tenant.

The landlord testified that he served the tenant with the Application for Dispute Resolution and Notice of Hearing by personal delivery on October 20, 2011; however the tenant did not appear at the hearing. The landlord successfully demonstrated sufficient delivery of the documents under Section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the tenant's absence.

The landlord appeared, gave affirmed testimony, and was provided the opportunity to present his evidence orally and in documentary form.

As a preliminary issue, the landlord stated he was no longer seeking an order of possession as the tenant had vacated the rental unit. As a result, I amend the landlord's application to exclude the matters related to an order of possession and deal only with the matter of unpaid rent and the tenant's security deposit.

As another preliminary matter, I have declined to consider the landlord's request to include a claim for cleaning, as the same was not applied for and the application was not amended and served upon the tenant.

### Issue(s) to be Decided

Is the landlord entitled to a Monetary Order under sections 67 and 72 of the *Residential Tenancy Act* (the "Act"), authority to retain the tenant's security deposit, and to recover the filing fee?

### Background and Evidence

This one year, fixed term tenancy began on May 1, 2011, was to end on April 30, 2012, actually ended on October 20, 2011, when the tenant vacated the rental unit early, monthly rent was \$1,050.00 and the tenant paid a security deposit of \$525.00 at the beginning of the tenancy.

The landlord gave affirmed testimony and supplied evidence that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on October 10, 2011, by personal delivery. The Notice stated the amount of unpaid rent was \$1,050.00. The effective vacancy date listed on the Notice was October 20, 2011.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the tenant had five days to dispute the Notice.

I have no evidence before me that the tenant applied to dispute the Notice.

The landlord provided evidence and gave affirmed testimony that the tenant vacated the rental unit having failed to pay rent of \$1,050.00 for October and that he suffered a loss of revenue for one half of the month of November due to the early end of the fixed term tenancy, in the amount of \$525.00. The landlord testified that the tenant owed unpaid rent of \$1,575.00.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

The tenant has not paid the outstanding rent, did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find through the uncontradicted testimony and evidence that the landlord has established a total monetary claim of **\$1,625.00** comprised of unpaid rent of **\$1,575.00** and the **\$50.00** filing fee paid by the landlord for this application.

At the landlord's request, I allow the landlord to retain the tenant's security deposit of **\$525.00** in partial satisfaction of the claim and I grant the landlord a monetary order under authority of section 67 of the Act for the balance due of **\$1,100.00**.

I am enclosing a monetary order for **\$1,100.00** with the landlord's Decision. This order is a **final, legally binding order**, and may be filed in the Provincial Court of British Columbia (Small Claims) should the tenant fail to comply with this monetary order.

### Conclusion

The landlord is directed to keep the tenant's security deposit in partial satisfaction of his monetary claim and is granted a monetary order for **\$1,100.00**.

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: November 13, 2011.

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Residential Tenancy Branch