



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNR; MNSD; FF

### **Introduction**

This is the Landlord's application for a Monetary Order for unpaid rent; to retain the security deposit in partial satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

### **Issues to be Decided**

- Was there a tenancy agreement between the Landlords and the Tenants?
- Are the Landlords entitled to a monetary award for unpaid rent and utilities for the month of October, 2011?

### **Background and Evidence**

The Landlords gave the following testimony and evidence:

The Landlords testified that the Tenants filled out a Rental Application for the rental unit on September 5, 2011, a copy of which was provided in evidence. On September 6, 2011, the Tenants paid a security deposit in the amount of \$450.00 cash and the Landlords issued a receipt, a copy of which was provided in evidence. The Landlords testified that they had many people interested in the rental unit, so they called other prospective tenants and told them that it had been rented.

The Landlords testified that the parties agreed that the tenancy would begin on October 1, 2011, and that monthly rent would be \$900.00. In addition, the Landlords stated that the Tenants agreed to pay utilities in the amount of \$110.00 per month, which was the average amount paid over a 12 month period. The Landlords testified that the Tenants agreed to sign a term lease for 12 months, but the lease was not signed. The Landlords testified that they were going to have the Tenants sign the lease agreement when they met for a Condition Inspection at the beginning of the tenancy.

The Landlords testified that the Tenant MG called the Landlord on September 25, 2011, and advised them that she had changed her mind about moving into the rental unit with

the Tenant SR. The Landlords testified that neither Tenant provided a written notice to end the tenancy.

The Landlords testified that, in an attempt to mitigate their loss, they offered to reduce the rent by \$100.00 for the first month until MG could find another roommate. They stated that they heard nothing more from MG until September 28, 2011, when she e-mailed the Landlords stating that she had not been able to find another roommate and giving them permission to retain the security deposit. The Landlords responded to her e-mail, asking her to provide written notice that she would not be moving into the rental unit on October 1, 2011. The Landlords testified that the Tenant did not respond to their e-mail, or provide written notice, but they re-advertised the rental unit on two on-line sites on September 30, 2011.

The Landlords testified that they e-mailed MG again on October 1, 2011, to enquire if she was going to attend for the move-in inspection and move into the rental unit, but that they got no response. The Landlords re-rented the rental unit on October 6, 2011, effective November 1, 2011. They provided a copy of the rental agreement in evidence.

The Landlords requested a monetary award against both Tenants, calculated as follows:

|                                    |                  |
|------------------------------------|------------------|
| Unpaid rent for October, 2011      | \$900.00         |
| Unpaid utilities for October, 2011 | \$110.00         |
| Less security deposit              | <u>-\$450.00</u> |
| TOTAL                              | \$560.00         |

The Tenant SR gave the following testimony:

The Tenant SR agreed that the Tenants had provided a security deposit in the amount of \$450.00 on September 6, 2011. She disagreed that they had agreed to sign a one year lease and stated that they were more comfortable with a 6 month lease.

The Tenant SR stated that the Landlords said nothing to her about requiring written notice that they were not moving in. She stated that she had clearly agreed that the Landlords could retain the security deposit.

The Tenant SR submitted that some time after September 25 and before October 1, 2011, the Landlords reached a new agreement with MG that MG would move in by herself and get a break on the rent. The Tenant SR submitted that therefore, she was not responsible for any unpaid rent for the month of October, 2011.

The Tenant MG gave the following testimony:

The Tenant MG agreed with the Tenant SR that she had an agreement with the Landlords on September 25, 2011, that she would be renting the suite on her own. The Tenant MG stated that she also agreed with the Tenant SR that SR was not involved in the tenancy after September 25, 2011.

The Tenant MG stated that she notified the Landlords on September 28, 2011, she would not be moving in, but that she did not sign a tenancy agreement and therefore did not believe that she was responsible for paying rent for October, 2011. The Tenant MG stated that she had agreed that the Landlords could retain the security deposit.

The Landlords gave the following reply:

The Landlords submitted that they were attempting to mitigate their loss when they offered to rent the rental unit to MG alone, but that they still required a written notice to end the tenancy. They submitted that the Tenants were joint tenants and that neither had provided the Landlords with written notice to end the tenancy.

**Analysis**

Was there a tenancy agreement between the Landlords and the Tenants?

Section 13 of the Act requires a landlord to prepare a tenancy agreement in writing, however Section 1 of the Act defines a tenancy agreement as follows: “**tenancy agreement**” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit’.

Section 16 of the Act provides that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Section 1 of the Act defines a security deposit as follows: “**security deposit**” means money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property’.

Based on the testimony of both parties and the documentary evidence provided by the Landlords, I find that the parties entered into a tenancy agreement on September 6, 2011, when the Tenants provided the Landlords with the security deposit. The parties agreed that rent was \$900.00 per month and that the tenancy would begin on October

1, 2011. The parties did not agree with respect to whether or not the agreement was for a fixed term or simply a month to month tenancy, but it is of no consequence with respect to the Landlords' claim. The Landlords re-rented the rental unit effective November 1, 2011, at the same amount of rent, and therefore are not claiming for loss of revenue for December, 2011 or beyond.

Are the Landlords entitled to a monetary award for unpaid rent and utilities for the month of October, 2011?

Section 12(b) of the Act provides that the standard terms are terms of every tenancy agreement whether or not the tenancy agreement is in writing. The standard terms are set out in the Regulations and do not include a term with respect to payment of utilities. Therefore, I find that the requirement for the Tenants to pay utilities was not a part of the tenancy agreement and the Landlords' application for unpaid utilities is dismissed.

Section 44 of the Act states:

**How a tenancy ends**

**44 (1) A tenancy ends *only if one or more of the following applies*:**

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 45 *[tenant's notice]*;
- (ii) section 46 *[landlord's notice: non-payment of rent]*;
- (iii) section 47 *[landlord's notice: cause]*;
- (iv) section 48 *[landlord's notice: end of employment]*;
- (v) section 49 *[landlord's notice: landlord's use of property]*;
- (vi) section 49.1 *[landlord's notice: tenant ceases to qualify]*;
- (vii) section 50 *[tenant may end tenancy early]*;

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

(emphasis added)

Section 52 of the Act requires that a notice to end a tenancy **must** be in writing in order to be effective.

I find that the Tenants did not provide the Landlords with a notice to end tenancy that met the requirements of Sections 44 and 52 of the Act, and that the parties did not enter into a mutual agreement to end the tenancy in accordance with the provisions of Section 44(1)(c) of the Act. I do not accept the Tenant SR's position that the Landlords formed another tenancy agreement with MG as the sole tenant. I find that the Tenants are joint tenants under the tenancy agreement.

Therefore, I find that the Landlords have established a monetary award in the amount of \$900.00 for unpaid rent for the month of October, 2011, against both Tenants. It will be up to the Tenants to apportion the award between themselves, if they so choose.

Pursuant to the provisions of Section 72(2)(b) of the Act, the Landlords may apply the security deposit towards partial satisfaction of the Landlords' monetary award.

The Landlords have been successful in their application and I find that they are entitled to recover the cost of the \$50.00 filing fee from the Tenants.

I hereby provide the Landlords a Monetary Order against both Tenants, calculated as follows:

|  |                 |
|--|-----------------|
| Unpaid rent for October, 2011                          | \$900.00        |
| Subtotal   | \$950.00        |
| Less security deposit                                  | - \$450.00      |
| <b>TOTAL AMOUNT DUE TO THE LANDLORDS AFTER SET-OFF</b> | <b>\$500.00</b> |

### **Conclusion**

I hereby provide the Landlords a Monetary Order in the amount of **\$500.00** for service upon both of the Tenants. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: January 16, 2012.

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Residential Tenancy Branch