



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Landlords' application: MNR; MNDC; MND; MNSD

Tenant's application: MNSD

### **Introduction**

This Hearing was convened to consider cross applications. The Landlord filed an Application for Dispute Resolution seeking a Monetary Order for unpaid rent and to apply a portion of the security deposit and pet damage deposit in partial satisfaction of his monetary award.

The Tenants seek the return of the security deposit and pet damage deposit from the Landlord.

Both parties appeared and gave affirmed testimony at the Hearing.

### **Preliminary Matters**

The Landlord sought to amend his application to include a claim for unpaid utilities and damage to the stove. Although the Landlord did not amend his Application with the Residential Tenancy Branch, the Tenant testified that she was aware of this claim, as she was served with a copy of the Landlord's application with the handwritten additions to his claim along with a copy of the utility bill, on or about March 7, 2012. Therefore, I allowed the amendment to the Landlord's claim.

### **Issues to be Decided**

1. Is the Landlord entitled to a Monetary Order for unpaid rent from January 1 to 14, 2012, unpaid utilities for the period between January 1 and 14, 2012, and damages to the stove?
2. Are the Tenants entitled to return of the security and pet damage deposits?

### **Background and Evidence**

A copy of a tenancy agreement was provided in evidence. This tenancy began on December 28, 2010. The tenancy agreement is a fixed term lease, ending December 31, 2011. The tenancy agreement includes the following clause: "At the end of this

fixed length of time the tenancy ends and the tenant must move out of the residential unit.” Both parties placed their initials in the boxes to the right of this clause.

Monthly rent was \$2,850.00, due on the first day of each month. The Tenants were responsible for paying utilities. The Tenants paid a security deposit and a pet damage deposit, each in the amount of \$1,425.00, on December 22, 2010.

The Tenants moved out of the rental unit on December 31, 2011. There was no move out Condition Inspection Report completed at the end of the tenancy.

The Landlord provided the following testimony:

The Landlord testified that the parties had discussed extending the lease in November, 2010 and that on December 1, 2011, the Tenants indicated that they were interested in entering into a new tenancy agreement with the Landlord. He stated that he met with the male Tenant on December 2, 2011, and that the parties verbally agreed to a two month lease, at \$3,100.00 per month. The Landlord testified that he did not advertise the rental unit for rent effective January 1, 2012, because of this verbal agreement.

The Landlord stated that on December 7, 2011, the Tenants advised that they had bought a home and therefore would not be signing a lease for two more months. The Landlord testified that he immediately advertised the rental unit and was able to re-rent it effective January 15, 2012. He submitted that he relied on their verbal agreement and that as a result of their failure to honour that commitment, he lost ½ a month's rent. The Landlord seeks a monetary award in the amount of \$1,550.00 for this portion of his claim, being ½ half of the negotiated rent for the two month term. The Landlord provided copies of various e-mails between the parties in support of his claim.

The Landlord also seeks a monetary award for unpaid utilities for the period of January 1 to 14, 2012. The Landlord provided a copy of the utility bill in evidence.

The Landlord testified that the Tenants damaged the stove by chipping some enamel off it. He stated that the stove was new at the beginning of the tenancy. The Landlord seeks a monetary award in the amount of \$100.00 for these damages.

The Tenant provided the following testimony:

The Tenant disputed that they had agreed to sign a further 2 month lease for \$3,100.00 per month. She stated that they had attempted to negotiate a monthly agreement with the Landlord, but that the Landlord had insisted on a lease. The Tenant submitted that although they were negotiating renting the rental unit after the lease expired, nothing

was agreed upon or signed and therefore the Tenants should not be held responsible for any rent after December 31, 2011. She submitted that the Tenants should not be held responsible for paying any utilities after December 31, 2011.

The Tenant denied that they damaged the stove at the rental unit. The Tenant provided photographs of the rental unit, taken at the end of the tenancy.

## **Analysis**

### **The Landlord's application**

Section 13 of the Act requires a landlord to prepare in writing every tenancy agreement, which must comply with any requirements prescribed in the regulations and must set out all of the standard terms. In this case, the parties did not sign such an agreement other than the tenancy agreement which ended on December 31, 2011. However, 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".

Whether a tenancy agreement is in written form or a verbal agreement, it is a contract and as such the parties must come to consensus about the terms of the agreement (for example the term of the tenancy if it is to be a lease, the rent to be paid, etc.)

This is the Landlord's claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

In order to prove that the Tenant owes the Landlord rent under a tenancy agreement, the Landlord must satisfy four different elements:

1. Proof that an oral tenancy agreement existed between the parties after December 31, 2011;
2. Proof that the Landlord suffered a loss due to the Tenants' breach of that tenancy agreement;
3. Proof of the actual amount required to compensate the Landlord for the unpaid rent; and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I have carefully considered the oral testimony of the parties and the documentary evidence provided and find that the Landlord has not met this test. The Tenants dispute the Landlord's allegation that they came to an agreement with respect to the terms of a new tenancy agreement and there is no documentary evidence in the emails that they did so. By e-mail dated December 7, 2011, the male Tenant writes, in part:

"Now we have two options:

1. Leave at the end of the month of December 2011 or
2. Renew a lease for 2 weeks until January 15<sup>th</sup> 2012.

Please let me know which option you would prefer (sic)."

On December 7, 2011, the Landlord replied, in part:

"After verbally agreeing to an extension until the end of February you have not allowed enough time for us to find a new tenant for January 1<sup>st</sup>.

As a compromise I would suggest January 31<sup>st</sup> would be an acceptable termination date.

I await your reply."

The Tenant replied with his original offer of mid January.

In his testimony and in his e-mails, the Landlord submitted that the Tenants had previously agreed to lease the rental unit for January and February for \$3,100.00 per month, but there is no e-mail **from the Tenant** confirming or alluding to such an agreement. In fact, all of the e-mails from the Tenant suggest that the Tenant did not agree that there was a meeting of the minds with respect to the a prospective tenancy agreement. Therefore, I find that the Landlord has failed to provide sufficient evidence that the parties entered into a verbal agreement to rent the rental unit after December 31, 2011. I find that the tenancy ended on December 31, 2011 pursuant to the terms of the written contract between the parties.

As I have found that the tenancy ended on December 31, 2011, I find that the Tenants are not responsible for payment of utilities after December 31, 2011, and the Landlord's application to recover the cost of utilities from January 1 – 14, 2012, is dismissed.

The Landlord did not provide sufficient evidence to support his claim of \$100.00 for a chip in the stove. For example, there was no documentary evidence that the stove was new at the beginning of the tenancy; no documentary evidence that the stove was

damaged at the end of the tenancy; and no documentary evidence (a bill) of any cost incurred to repair the stove. Therefore this portion of the Landlord's application is also dismissed.

Regarding the Tenants' application

The Landlord's application has been dismissed in its entirety and therefore, I order that the Landlord return the Tenants' security and pet damage deposits in the total amount of \$2,850.00 forthwith. I hereby provide the Tenants a Monetary Order in the amount of \$2,850.00 against the Landlord.

**Conclusion**

The Landlord's application is **dismissed without leave to reapply**.

The Tenants' application is granted. I hereby provide the Tenants a Monetary Order in the amount of **\$2,850.00** for service upon the Landlord. This Order may be filed in the Provincial Court 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: March 26, 2012.

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Residential Tenancy Branch