



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR, MNDC, MNSD, FF

### Introduction

This hearing was scheduled in response to the landlord's application for a monetary order as compensation for unpaid rent or utilities / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee.

The landlord participated in the hearing and gave affirmed testimony. Despite service of the application for dispute resolution and notice of hearing by way of registered mail, the tenant did not appear. Evidence submitted by the landlord includes the Canada Post tracking number for registered mail, and the Canada Post website informs that the package was "successfully delivered."

During the hearing the landlord withdrew the aspect of the application concerning unpaid rent or utilities.

### Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement, the original year-long fixed term of tenancy was from April 1, 2011 to March 31, 2012. Later, while the start date remained unchanged, by way of mutual agreement the "length" of the tenancy and the "end date" were both amended. The amendments made on the tenancy agreement are initialled by both parties. The "length" was amended from one year to 6 months. The "end date" was amended from March 31, 2012 to October 31, 2011.

The inconsistency arising from the above amendments is as follows: while the parties agreed to a 6 month term, they also agreed that the end date would be October 31, 2011. In fact, a 6 month tenancy which begins on April 1, 2011, ends on September 30,

2011. On the other hand, it is a 7 month tenancy which begins on April 1, 2011 and ends on October 31, 2011.

While this inconsistency might not often be problematic, in this case the tenants later wanted to end the tenancy early, and a dispute arose around whether the amended end date which had previously been agreed upon was actually September 30 or October 31, 2011.

Monthly rent of \$900.00 was due and payable in advance on the first day of each month, and a security deposit of \$450.00 was collected. The tenant named on the tenancy agreement, "RW," did not ever reside in the unit. The two residents in the unit were "EW" ("RW's" mother) and "AT" ("EW's" friend.)

By e-mail to the landlord dated on or about August 3, 2011, "EW" communicated his wish to end the tenancy early. Ultimately, the tenants vacated the unit by August 31, 2011, and paid rent up to that date. Despite advertising, new renters were not found until December 2011. The landlord seeks compensation for loss of rental income for both months of September and October 2011.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Section 45 of the Act addresses **Tenant's notice**, and provides in part as follows:

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 7 of the Act addresses **Liability for not complying with this Act or a tenancy agreement**, and provides:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, I find that it is arguable the tenants gave proper notice to end the tenancy if one takes the position that the fixed term of tenancy ended September 30, 2011. In this event, as the tenants only paid rent up to August 31, 2011, the tenants would be liable for the landlord's loss of rental income limited to September 2011.

On the other hand, if one takes the position that the fixed term ended on October 31, 2011, then it is arguable that the tenants are liable for the landlord's loss of rental income for both September and October 2011.

With either of the above propositions, I find that the landlord undertook to mitigate his loss of rental income by advertising for new renters in a timely fashion.

In view of the inconsistency arising from the amended "length" and "end date" to tenancy which I find was unwittingly agreed to by both parties, I find that the landlord has established entitlement in the total amount of \$1,400.00. This is comprised as follows:

\$900.00: loss of rental income for September 2011

\$450.00: loss of rental income for the period from October 1-15, 2011

\$50.00: filing fee

I order that the landlord retain the security deposit of \$450.00, and I grant the landlord a monetary order for the balance owed of \$950.00 (\$1,400.00 - \$450.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$950.00**. Should it be necessary, this order may be served on the tenant, filed in the 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: May 29, 2012.

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Residential Tenancy Branch