



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR MNSD FF

### Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for a monetary order for unpaid rent and to retain all or part of the security deposit; and to recover the filing fee.

The tenants and the landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing both parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The tenants stated that they received the application and the evidence package from the landlord. I find the tenants were served in accordance with the *Act*.

### Issue(s) to be Decided

- Should the landlord be granted a monetary order for unpaid rent?
- Should the landlord retain all or part of the security deposit?
- Should the landlord recover the filing fee?

### Background and Evidence

The tenancy agreement was provided as documentary evidence prior to the hearing. The tenancy began on May 8, 2011 and was originally a fixed term tenancy ending on April 31, 2012. At the start of the tenancy, rent was \$795.00 plus \$5.00 for a digital cable box for a total of \$800.00 rent due on the 1<sup>st</sup> day of each month. A security deposit of \$397.50 was paid by the tenants on April 22, 2011.

In December 2012, both parties agree that when a larger suite became vacant within the home, the tenants vacated the original smaller suite and moved into the larger suite for a new monthly rent amount of \$900.00. Tenant KF, stated that the landlord promised to write up a new tenancy agreement reflecting the new monthly rent, however a new

written tenancy agreement was not created. The landlord did not provide any evidence of a new written tenancy agreement.

Tenant KF states that he advised the landlord's spouse on March 1, 2012 that they will be vacating the rental unit at the end of March 2012. The landlord disputed this testimony by stating that the tenants' written notice on March 16, 2012 was the date he was aware that the tenants were vacating with an effective date of April 15, 2012. Both parties agree the tenants vacated the rental unit on April 15, 2012.

The tenants testified that although their written notice implied they were on good terms with the landlord, they both felt the suite was extremely dirty and was causing health concerns for their newborn baby. The landlord disputed their testimony by stating the suite was clean and that he painted the suite for the tenants. The tenants disputed that the suite was painted by the landlord. The tenants did not notify the landlord in writing regarding their concerns in relation to the cleanliness of the suite during the tenancy.

The landlord testified that no rent was paid for April 2012, which the tenants did not dispute. The landlord is seeking a monetary order of \$450.00 and indicates that the tenants agreed to leave the security deposit to cover half of a month's rent. Based on the landlord's testimony, the landlord is seeking \$900.00 for April 2012 rent and to keep the full security deposit in partial satisfaction of his claim.

The landlord provided copies of the original tenancy agreement; written notice from tenant; correspondence; and registered mail receipts as evidence for this proceeding.

### Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

**Creation of new tenancy agreement** - When the landlord permitted the tenants to vacate the smaller suite and move into the larger suite in December 2012, a new verbal tenancy agreement was created. The creation of the new tenancy agreement ended the original fixed term tenancy agreement. I find the tenancy become a month to month tenancy in December 2012. Both parties agreed that rent in the amount of \$900.00 was due on the 1<sup>st</sup> day of each month.

**Tenants' 1 month notice** – Tenant KF testified that he provided verbal notice on March 1, 2012. Although written notice is required to end a month to month tenancy agreement, the verbal notice on March 1, 2012, would not have changed my Decision as a 1 month notice must be served no later than the day before the day the rent is due,

in accordance with section 45 of the *Act*. In this matter, the tenants would have been required to serve notice on or before April 30, 2012 if the tenants wanted to vacate by March 31, 2012 without penalty. I find the tenants did not serve proper notice under the *Act* until May 16, 2012. The tenants' 1 month notice corrects under the *Act* to April 30, 2012 as rent is due on the 1<sup>st</sup> day of each month.

**Claim for unpaid rent** – The landlord testified that April 2012 rent was not paid. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. Therefore, I find the landlord has met the burden of proof and I award the landlord a monetary claim of **\$900.00** for April 2012 rent owed.

The landlord is holding a security deposit of \$397.50 which was paid by the tenant on April 22, 2011, and includes \$0.00 in interest since that date. The landlord has succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the landlord is entitled to a monetary order of **\$950.00** and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit plus interest of \$397.50, for a balance due of **\$552.50**.

### Conclusion

I find that the landlord has established a total monetary claim of \$950.00 as indicated above. I order that the landlord retain the deposit and interest in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$552.50**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: June 27, 2012

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Residential Tenancy Branch