



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

OPR, CNR, MNR, MNSD, MNDC, OLC, FF

### Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent or utilities, a monetary Order for money owed or compensation for to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant has applied to set aside a Notice to End tenancy and for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement.

At the hearing the Landlord withdrew the application for an Order of Possession and the Tenant withdrew the application to set aside the Notice to End Tenancy, as the rental unit has been vacated.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

### Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary Order for unpaid rent; to keep all or part of the security deposit; whether the Landlord is entitled to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution; and whether there is a need to issue an Order requiring the Landlord to

comply with the *Act* or the tenancy agreement, pursuant to sections 38, 62(3), 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The Landlord and the Tenant agree that the Tenant was permitted to move into the rental unit on September 13, 2009, which was one day before the official beginning of the tenancy. The parties agree they entered into a fixed term tenancy agreement, a copy of which was submitted in evidence. The tenancy agreement specifies that the agreement was for a fixed term that began on September 15, 2009 and ended on September 15, 2009. The parties agree that this is a clerical error and that the term was to end on September 15, 2010.

The Landlord and the Tenant agree that the Tenant paid a security deposit of \$925.00. The male Landlord stated that it was paid on August 14, 2009 but the Tenant does not recall when it was paid. The parties agree that the Tenant has not yet provided the Landlord with a forwarding address, in writing, although it was provided orally at the hearing.

The Landlord and the Tenant agree that they signed a second agreement for the period between September 15, 2010 and September 15, 2011, a copy of which was not submitted in evidence.

The Landlord and the Tenant agree that they signed an Extension of Lease, a copy of which was submitted in evidence. In this document the parties agree to extend the terms of their lease, dated September 15, 2011, for a fixed term that began on September 15, 2011 and ended on September 15, 2012. The Tenant stated that when he signed the Extension of Lease he believed he was entering into a periodic tenancy for the rental unit.

The Landlord and the Tenant agree that the rent for the rental unit, exclusive of office space, remained at \$1,850.00 for the duration of the tenancy, and was due by the first day of each month.

The Landlord and the Tenant agree that on May 30, 2012 the Tenant sent an email to the Landlord, in which the Landlord was informed of the Tenant's intent to vacate the rental unit on July 01, 2012, and in which the Tenant informed the Landlord that he had left written notice in the Landlord's mail box. The male Landlord stated that he received the email on June 01, 2012 and that he found the notice in the mail box on June 02, 2012. The parties agree that the Tenant vacated the rental unit on July 01, 2012.

The Landlord and the Tenant agree that the Tenant did not pay rent that was due on June 01, 2012. The Landlord seeks compensation for unpaid rent, in the amount of \$1,800.00.

The Landlord is also seeking compensation for loss of revenue from the month of July of 2012, which was experienced as a result of the premature end of the fixed term tenancy. The male Landlord stated that the unit was advertised on popular internet sites and the local media, beginning on June 06, 2012, but they have not yet located a new tenant. The Landlord and the Tenant agree that the Landlord was showing the rental unit to prospective tenants in June.

The Landlord is also seeking compensation, in the amount of \$45.07, for the cost of advertising the rental unit. The Landlord submitted a receipt to show this expense was incurred.

The Landlord and the Tenant agree that on May 08, 2010 the Tenant subsequently agreed to rent a room attached to the rental unit for an additional monthly rate of \$225.00; that the parties agreed to reduce the rent for this room to \$150.00 per month, effective September 01, 2011; the parties subsequently agreed to terminate this agreement; and that the Tenant removed his possessions from the room at the end of February of 2012.

The Landlord is claiming compensation, in the amount of \$1,950.00, for unpaid rent for the additional space. The male Landlord was unable to articulate exactly how the debt of \$1,950.00 had accrued, although he was certain that rent has not been paid for the months of October of 2010; November of 2010; December of 2010; January of 2011; February of 2011; March of 2011; April of 2011; and May of 2011. The Tenant cannot recall if he paid any rent during this period.

The Landlord and the Tenant agree that the Tenant is responsible for paying for hydro charges at the rental unit; that the Tenant agreed to pay a monthly charge of \$200.00 for utilities; that the Landlord would later inform the Tenant of the amount of hydro actually used and the Tenant would pay additional money if the usage exceeds the monthly charge; and that the Landlord would refund money to the Tenant if the monthly charge exceeded the usage.

The Landlord and the Tenant agree that the Tenant did not pay the monthly hydro fee for May or June of 2012. The Tenant stated that he is delaying this payment until a final reconciliation has been made.

The Landlord is seeking \$454.72 in unpaid utilities, \$400.00 of which is the unpaid monthly fees from May and June of 2012, less and \$54.72 of which represents hydro costs that exceed the monthly payments. Although the Landlord submitted several written demands for hydro payments, in which he explains amounts owing, the Landlord submitted no independent documentary evidence, such as a hydro receipt, to show that the Tenant incurred hydro charges in excess of the monthly fees.

### Analysis

I find that the Landlord and the Tenant entered into a fixed term tenancy agreement that required the Tenant to pay monthly rent of \$1,800.00 by the first day of each month. I find that the original fixed term of the tenancy agreement was between September 15, 2009 and September 12, 2010, that the parties later agreed to extend the fixed term of the agreement to run from September 15, 2010 and September 12, 2011; and that the parties again agreed to extend the fixed term of the agreement to run from September 15, 2011 and September 12, 2012. While the Tenant may not have understood that he was entering into a fixed term agreement for the period between September 15, 2011 and September 12, 2012 when he signed the Extension of Lease, I find that the document is very clear and that the Tenant is obligated to comply with the terms of this document.

On the basis of the undisputed evidence I find that the Tenant did not pay rent that was due by June 01, 2012. As the Tenant is required to pay rent when it is due pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,800.00 in outstanding rent to the Landlord.

I find that the Tenant did not comply with section 45(2) of the *Act* when the Tenant ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement. I therefore find that the Tenant must compensate the Landlord for any losses the Landlord experienced as a result of the Tenant's non-compliance with the *Act*, pursuant to section 67 of the *Act*.

I find that in spite of reasonable efforts to locate new tenants the Landlord has been unable to find new tenants for July 01, 2012. As it is unlikely they are going to find a new tenant prior to July 15, 2012, I find that the Tenant must compensate the Landlord for lost revenue for the period between July 01, 2011 and July 15, 2012, in the amount of \$925.00. As I have no reason to conclude that the Landlord will be unable to locate a new tenant for July 15, 2012, I dismiss the Landlord's application for compensation for lost revenue for the period between July 15, 2012 to July 31, 2012, with leave to reapply on this single issue, if the Landlord is unable to rent the unit for July 15, 2012.

I find that the Landlord is also entitled to recover costs of advertising the unit, in the amount of \$45.07, as this expense would not have been incurred if the tenancy had not ended prematurely.

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant agreed to rent additional space in the rental unit; that he agreed to pay monthly rent of \$225.00 for this space for the period between May 08, 2010 and August 31, 2011; and that he did not pay the rent that was due for October of 2010; November of 2010; December of 2010; January of 2011; February of 2011; March of 2011; April of 2011; and May of 2011. I therefore find that the Tenant owes the Landlord \$1,800.00 in rent for the additional space. I decline to award compensation in excess of this amount, as the Landlord could not clearly articulate why additional rent was owed.

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant agreed to pay a monthly utility fee of \$200.00 and that the Tenant has not paid this fee for May or June of 2012. As the Tenant agreed to pay this fee, I find that the Tenant owes the Landlord \$400.00 for utilities.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant incurred hydro charges in excess of the monthly fees that were paid and I therefore dismiss the Landlord's claim for additional hydro charges of \$54.72. In reaching this conclusion I was heavily influenced by the absence of hydro receipts that clearly establish hydro used during any particular billing period. In my view the Landlord has an obligation to produce the bills rather than to simply submit a summary of the costs.

### Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$5,070.07, which is comprised of \$4,525.00 in unpaid rent/loss of revenue, \$400.00 for utilities, \$45.07 for advertising costs and \$100.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

As I can find no reason to issue an Order requiring the Landlord to comply with the Act or the tenancy agreement, this portion of the Tenant's Application for Dispute Resolution is being dismissed.

Pursuant to section 72(2) of the Act, I authorize the Landlord to retain the Tenant's security deposit, in the amount of \$925.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$4,145.07. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province 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: July 05, 2012.

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Residential Tenancy Branch