



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNR, OPR, FF

### Introduction

This hearing dealt with the landlords' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for unpaid rent, for authority to retain the tenants' security deposit, an order of possession due to unpaid rent, and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and no party raised any issue regarding service of the evidence or application.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

I note that the parties confirmed the tenants have vacated the rental unit and therefore the landlord no longer required an order of possession. I therefore amended their application to exclude that request and the hearing proceeded on the landlords' monetary claim.

### Issue(s) to be Decided

Are the landlords entitled to a monetary order, authority to retain the tenants' security deposit and to recover the filing fee?

### Background and Evidence

This month to month tenancy began on March 1, 2011, monthly rent was \$800.00, and the tenants paid a security deposit of \$400.00 on or about February 25, 2011.

When questioned, the landlord said they bought the home from the original landlord and took ownership in July 2012.

The landlords' monetary claim is in the amount of \$850.00, for unpaid rent for September 2012 and the filing fee of \$50.00.

In support of their application, the landlord said that the tenants were issued a 1 Month Notice to End Tenancy for Cause on or about August 8, 2012, listing an effective move out date of September 15, 2012.

When the tenants failed to pay rent of \$800.00 on September 1, 2012, the landlord served the tenants a 10 Day Notice to End Tenancy for Unpaid Rent on September 2, 2012, listing unpaid rent of \$800.00 for September and an effective move out date of September 11, 2012. Due to this, the landlords claim they are entitled to monetary compensation in the amount of \$800.00 as unpaid rent for September 2012.

In response, the tenants said that they accepted the 1 Month Notice and vacated the rental unit prior to the effective end of the tenancy date of that Notice by moving out on September 11, 2012.

The tenants said that they asked the landlords to keep their security deposit as payment of their rent for half the month of September as they had not damaged the rental unit.

### Analysis

Section 44 of the Act sets out ways a tenancy ends, one way being when a landlord issues a tenant a 1 Month Notice to end the tenancy pursuant to section 47.

When a tenant receives a 1 Month Notice pursuant to section 47 of the Act, as is the case here, the tenant has two choices: to dispute that Notice within 10 days or to accept the tenancy has ended and vacate the rental unit on or before the effective date of the Notice.

In the case before me, the tenants elected not to dispute the Notice, but rather chose to vacate the rental unit on or before the listed effective date of September 15, 2012, whether or not the listed effective date was valid under the Act.

As the landlords elected to end the tenancy at the mid month point, I find the tenants were obligated to pay rent for one half of the month of September 2012, or \$400.00, and did not pay.

I also allow the landlords recovery of the filing fee of \$50.00.

### Conclusion

I therefore find the landlords have established a total monetary claim of \$450.00 comprised of half a month's rent for September 1-15, 2012 and recovery of the filing fee of \$50.00.

I allow the landlords to retain the tenants' security deposit of \$400.00 in partial satisfaction of their monetary claim and grant the landlords a final, legally binding monetary order for the balance due in the amount of \$50.00, which I have enclosed with the landlords' Decision.

Should the tenants fail to pay the landlords this amount without delay, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement 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* and is being mailed to both the applicants and the respondents.

Dated: September 28, 2012.

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Residential Tenancy Branch