



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC 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 money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The agent for the landlord (the "agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was 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.

As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing (the "Notice") was considered. The agent stated that the tenants were served with the Notice and evidence by registered mail on August 7, 2012, to the forwarding address provided by the tenants. A tracking number was provided as evidence. Given the undisputed testimony of the agent, I find the tenants were served in accordance with the *Act*.

### Preliminary Matter

The landlord applied for dispute resolution on August 2, 2012 requesting a monetary order due to the tenants providing improper notice under the *Act* and stating that the "house is not rented yet". As a result, the landlord's application is considered to be a claim for lost rent for the month of August 2012.

### Issues to be Decided

- Should the landlord be granted a monetary order for money owed or compensation under the *Act*, regulation or tenancy agreement?

### Background and Evidence

According to the agent, a fixed term tenancy began on June 1, 2012 and was set to expire on November 30, 2012. Monthly rent in the amount of \$800.00 was due on the first day of each month. A security deposit of \$400.00 was received from the tenants at the start of the tenancy.

According to the agent, the tenants provided verbal notice in June 2012 that they would be vacating the rental unit. On July 11, 2012 the agent stated that the landlord received written notice from the tenants dated July 10, 2012 stating that they would be vacating the rental unit on July 31, 2012. The tenants vacated the rental unit on July 31, 2012.

The agent testified that the landlord suffered a loss of rent for the month of August 2012 in the amount of \$800.00 as the tenants breached the fixed term tenancy. The landlord was able to find new tenants for September 1, 2012, thereby minimizing the loss to the landlord.

The agent stated the landlord is seeking to retain the security deposit of \$400.00 towards the unpaid rent of \$800.00 for August 2012, and for a monetary order in the amount of \$400.00. In addition, the landlord is seeking to recover the filing fee of \$50.00.

### Analysis

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

#### Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did everything possible to minimize the damage or losses that were incurred.

**Claim for August 2012 rent**– The agent testified that rent in the amount of \$800.00 was not paid for the month of August 2012. The agent stated that the fixed term tenancy was not scheduled to expire until November 30, 2012. The tenants provided written notice on July 10, 2012, indicating that they would be vacating the rental unit on July 31, 2012. The tenants vacated the rental unit on July 31, 2012.

Section 45 of the *Act*, states:

**Tenant's notice**

**45** (1) A tenant may end a periodic 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, and

(b) 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.

**(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.**

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may

end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

**[emphasis added]**

Based on the agents' undisputed testimony, **I find** the tenants breached section 45 of the *Act*. The tenants did not provide proper written notice to the landlord that is not earlier than one month after the landlord receives the notice, and is not on a date that is earlier than the date specified in the tenancy agreement as the end of the tenancy. The tenants are not permitted under the *Act* to end a fixed term tenancy agreement early and did not make a claim against the landlord that the landlord breached a material term of the tenancy agreement.

**I find** the landlord has met the burden of proof as the landlord has proven that the tenants' failure to pay rent resulted in a loss to the landlord, that the loss is in the amount of \$800.00 and that the landlord minimized their loss by re-renting the rental unit effective September 1, 2012. Therefore, **I find** the landlord has established a monetary claim of **\$800.00** for unpaid rent for August 2012.

As the landlord's application has merit, **I grant** the landlord recovery of the filing fee in the amount of **\$50.00**. Therefore, **I find** the landlord has established a total monetary claim of **\$850.00** comprised of \$800.00 in unpaid rent and \$50.00 for the filing fee.

The landlord is holding a security deposit of \$400.00, which was paid by the tenants in May 2012 and has accrued no interest since May 2012.

**Monetary Order** – I find that the landlord has established a total monetary claim of \$850.00. **I find** that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants' security deposit of \$400.00. **I authorize** the landlord to retain the full security of \$400.00 in partial satisfaction of the claim, and **I grant** the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing to the landlord in the amount of **\$450.00**.

Conclusion

I find the landlord has established a total monetary claim of \$850.00. I authorize the landlord to retain the security deposit of \$400.00 in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 of the *Act* for the balance due of

**\$450.00.** 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: October 18, 2012

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Residential Tenancy Branch