



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) by the landlord to obtain an order of possession for unpaid rent, a monetary order for unpaid rent, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

An agent for the landlord (the “agent”), a witness for the landlord, and the tenants appeared at the teleconference hearing and gave affirmed testimony. During the hearing the 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 matters before me.

The agent confirmed at the outset of the hearing that the tenants were not served with evidence as he did not have a service address for the tenants since they vacated the rental unit on December 1, 2012. As a result, the documentary evidence of the landlord was excluded as it was not served in accordance with the rules of procedure.

### Preliminary and Procedural Matters

The agent requested to increase the monetary claim to include damages not listed in the details of dispute. I denied the agent’s request; as such a change would have prejudiced the tenants. The agent was advised that he is at liberty to apply for damages up to 2 years after the end of tenancy, however, the landlord’s application details included unpaid rent only.

At the outset of the hearing, the agent stated that the landlord was no longer seeking an order of possession as the tenants vacated the rental unit on December 1, 2012. As a result, the request for an order of possession was withdrawn by the landlord.

The agent requested to add the monthly rent owing for December 2012 in the amount of \$709.00 to the application. I find that it is reasonable that the tenants would be aware

that rent was due on the 1<sup>st</sup> of the month based on the tenancy agreement and, therefore, does not prejudice the tenants as a result. The agent's request to add December 2012 rent of \$709.00 was granted as a result.

The tenants confirmed that the application contained the incorrect name of the female tenant and, therefore, by consent of the parties, the application was amended to reflect the correct name of the female tenant.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*?
- What should happen to the security deposit under the *Act*?

### Background and Evidence

The parties agreed that a new verbal tenancy agreement began on August 1, 2012 when the tenants moved into a new rental unit. Monthly rent in the amount of \$709.00 was due on the 1<sup>st</sup> day of each month. A security deposit of \$300.00 was paid by the tenants at the start of an earlier tenancy in August 2010, and transferred by consent of the parties to the new tenancy. The landlord continues to hold the \$300.00 security deposit of the tenants which has accrued no interest to date.

The tenants testified that they gave verbal notice on November 10, 2012 that they would be vacating the rental unit on December 1, 2012. The tenants stated that the landlord agreed to an arrangement where they would pay \$409.00 for November 2012 rent, and the landlord could keep their security deposit of \$300.00. The agent disputed the testimony of the tenants by stating that he did not agree to such an arrangement.

The agent testified that they are seeking \$300.00 for unpaid November 2012 rent, and full December 2012 rent of \$709.00, as the tenants failed to provide proper notice and moved out on December 1, 2012.

### Analysis

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

**Claim for unpaid rent** – The agent testified that \$300.00 remains unpaid for November 2012 rent, and \$709.00 is owing for December 2012 rent. Pursuant to section 26 of the *Act* tenants 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.

The tenants testified that the landlord agreed to keep their \$300.00 security deposit towards November 2012 rent owed, which the agent denies he agreed to.

Due to the lack of having such an agreement in writing, I find that the tenants owe \$300.00 rent for November 2012 based on their testimony that only \$409.00 was paid for November 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.**

(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]

#### **Form and content of notice to end tenancy**

**52** In order to be effective, a notice to end a tenancy **must be in writing and must**

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

[emphasis added]

Based on the above, **I find** the tenants have breached section 45 of the *Act* by failing to provide their notice to end tenancy not earlier than one month after the landlord receives the notice, and the day before rent is due. The tenants should have provided written notice also. For the tenants to have been able to end the tenancy on November 30, 2012, they would have had to serve the landlord with their written notice in accordance with section 52 on or before October 31, 2012 as the due date for November 2012 rent was November 1, 2012. In addition, the tenants would have had to have vacated the rental unit on November 30, 2012 by 1:00 p.m., and not December 1, 2012. Therefore, I find the landlord is entitled to rent for December 2012.

I find the landlord has met the burden of proof and has established a monetary claim of **\$1,009.00** comprised of \$300.00 in unpaid rent for November 2012 and \$709.00 for December 2012 unpaid rent.

As the landlord has succeeded with their application, **I grant** the landlord the recovery of the **\$50.00** filing fee.

The tenant's security deposit of \$300.00 has accrued no interest to date.

**Monetary Order** – I find that the landlord is entitled to a monetary claim 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 as follows:

Unpaid portion of November 2012 rent	\$300.00
Unpaid December 2012 rent	\$709.00
Filing fee	\$50.00
<b>Subtotal</b>	<b>\$1,059.00</b>
<i>Less Security Deposit</i>	<i>(\$300.00)</i>
<b>TOTAL OWING TO LANDLORD</b>	<b>\$759.00</b>

Conclusion

I find that the landlord has established a total monetary claim of \$1,059.00. I authorize the landlord to retain the full security deposit of \$300.00 in partial satisfaction of the claim, and I grant the landlord a monetary order under section 67 for the balance due of **\$759.00**. 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: December 18, 2012

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Residential Tenancy Branch