



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNR, FF

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested a monetary Order for unpaid rent and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

### Preliminary Matters

A number of individual evidence submissions were made by the landlord, most of which were not numbered. At the start of the hearing I determined that the only evidence considered would be those documents which each party could identify during the hearing. A spread sheet and the tenancy agreement were referenced during the hearing.

The landlord claimed unpaid rent and loss of rent revenue for August 2012; the details of the dispute set this claim out.

At the hearing the landlord reduced the original amount claimed; from \$3,725.00 to \$1,510.00.

### Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent and loss of rent revenue?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The tenancy agreement signed on October 27, 2010 indicated rent owed in the sum of \$1,500.00 per month, due in 2 equal payments; on the 1<sup>st</sup> and 15<sup>th</sup> of each month.

The parties agreed that effective November 2011 rent was reduced to \$1,200.00 per month.

The parties disagreed as to how the tenancy was ended. The tenant said that on July 4, 2012 he spoke with the landlord's agent who acknowledged that the tenant would vacate in July. The parties did agree that in July the tenant provided the name of another possible occupant; but that individual was not contacted by the landlord, nor did she successfully contact the landlord.

On July 28, 2012 the landlord telephoned the tenant to enquire about unpaid rent that was owed. The tenant told the landlord that he had vacated the rental unit. During the first week of August the landlord obtained the keys from the tenant.

The landlord located a new occupant effective September 1, 2012.

The landlord agreed that on January 3, 2013 a money order in the sum of \$720.00 was provided by the tenant; the landlord has yet to deposit that order. The landlord agreed that this payment would reduce the amount claimed to \$295.00 for July rent owed and \$1,200.00 for August loss of rent revenue.

The tenant had completed some work on behalf of the landlord and at times deductions had been given from rent owed. Some dispute was made in relation to an invoice for chimney repairs in the sum of \$295.00 issued by the tenant, which he believed should be deducted from July 2012 rent owed.

### Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

The parties did not dispute the terms of the tenancy, but they each had a different understanding as to how the tenancy ended. The tenant believed the landlord had agreed to allow the tenancy to end. The landlord said they knew the tenant was planning on moving but that no written notice or specific date had been provided by the tenant.

I have considered Section 45(1) of the Act, which provides:

**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.*

In the absence of a signed, mutual agreement ending the tenancy and, in the absence of written notice given to the landlord prior to July 1<sup>st</sup> or July 15<sup>th</sup>, 2012, I find that the tenant failed to give proper notice ending the tenancy, in accordance with section 45 of the Act. It appears that throughout the tenancy the parties had been able to make verbal agreements, but when a dispute arises and there is an absence of written agreement, I must apply the legislation.

The landlord confirmed receipt of a money order in the sum of \$720.00 which has yet to be deposited. I find that the money order further reduced the landlord's claim to the equivalent of \$295.00 for July 2012 rent and \$1,200.00 for loss of August 2012 rent revenue.

I find, pursuant to section 44 of the Act; that the tenancy ended on July 28, 2012; the date the landlord was informed the tenant had vacated the unit.

The landlord then had only several days to attempt to mitigate the loss they are claiming. It is not unreasonable that potential occupants would need to give notice so they could take possession of the unit effective September 1, 2012.

Any agreements in relation to deductions from rent owed are not within the jurisdiction of the Act as the tenancy agreement included terms for rent of the unit only.

Therefore, I find that the landlord is entitled to compensation for the balance of July 2012 rent owed in the sum of \$295.00 and to loss of August 2012, rent revenue in the sum of \$1,200.00

I find that the landlord's application has merit and that the landlord entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord established a monetary claim, in the amount of \$1,545.00, which is comprised of unpaid June 2012 rent of \$295.00; loss of August 2012 rent revenue in the sum of \$1,200.00 and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order for \$1,545.00. 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.

The balance of the claim is dismissed.

Conclusion

The landlord is entitled to compensation in the sum of \$1,495.00.

The landlord is entitled to filing fee costs.

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: January 10, 2013.