



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, seeking a monetary order for unpaid rent, to retain the security deposit in partial satisfaction of the claim, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, 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 facts and issues in this decision.

### Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenants?

### Background and Evidence

On or about July 31, 2012, the Tenants and the Landlord entered into a fixed term tenancy agreement. The initial term was for one year and ten days, to expire on August 31, 2013, and after this the tenancy would continue on a month to month basis.

The Tenants were to pay \$1,850.00 per month in rent, payable on the first day of each month. The Tenants paid the Landlord a security deposit of \$925.00 on August 27, 2012.

On November 1, 2012, the Tenants failed to pay rent and the Landlord subsequently issued a 10 day Notice to End Tenancy.

On November 8, 2012, the parties entered into a Mutual Agreement to End a Tenancy, using the standard form, and agreed that the Tenants would provide vacate possession of the rental unit to the Landlord at 2:00 p.m. on November 15, 2012. The parties also

agreed that the outgoing condition inspection report would be conducted at 2:00 p.m. on November 15, 2012.

On November 8, 2012, the parties also signed a letter containing an agreement for the payment of the rent due to the Landlord in the amount of \$2,305.00 (the "rent repayment agreement").

The rent repayment agreement sets out that the security deposit will be paid toward rent due, "... provided that the Tenant moves out on November 15<sup>th</sup> and leaves the home in the same condition that it was received." [Reproduced as written.]

The rent repayment agreement also explains how the condition of the rental unit shall be handled and that the Tenants were required to pay the Landlord back rent by installments over the next four months until the balance reached "0". The balance was to be paid in full by February 28, 2013.

The last sentence of the rent repayment agreement reads, "If any of these conditions are not honored, the Landlord will move forward with a Monetary order through the Residential Tenancy Branch." [Reproduced as written.]

On November 15, 2012, the Tenants were not ready to have the condition inspection report done at 2:00 p.m. They asked for extra time. A series of texts or emails were exchanged, where the Tenants said they would definitely be ready by 6:00 p.m. The Agent for the Landlord was unable to attend that late, and the condition inspection report was re-scheduled for the next day.

At the time of the outgoing condition inspection report on November 16, 2012, the Agent served the Tenants with the Landlord's Application for Dispute Resolution, asking for all the rent due for October and November of 2012, in the amount of \$3,230.00.

The Agent testified that it was her position that the Tenants breached the agreement to end the tenancy by not vacating the rental unit at 2:00 p.m. on November 15, 2012. The Agent testified that she filed the Landlord's application on the morning of the 16<sup>th</sup> in order to serve the Tenants with the Application at the time of the outgoing report, because she did not know when she would next have an opportunity for service.

The Agent testified that the Tenants had not provided her with their forwarding address at that time, nor did they at the time of performing the outgoing condition inspection report. I note that the Landlord had to request an order for substituted service of the evidence on the Tenants on February 5, 2013, as the Tenants had still not provided their forwarding address at that time.

The Agent for the Landlord further testified that the rental unit was not left clean as requested, and the Tenants had made no payments as agreed upon in the rent repayment agreement.

The appearing Tenant testified that he made no payments because he believed the Landlord breached the rent repayment agreement when they filed the Application for Dispute Resolution. The Tenant also testified that they did not pay the rent for November 2012, because they needed that money for the security deposit for their new rental accommodations.

The Tenant submitted that the difference between the agreed upon sum of \$2,305.00 in the rent repayment agreement and the amount of \$3,230.00 requested in the Application for Dispute Resolution made him think that if he made payments the Landlord would just ask for more money. He alleged he was concerned because the Landlord increased the amount owed in the Application to more than what was owed in the rent repayment agreement.

In reply, the Agent for the Landlord explained that the difference between the \$2,305.00 in the rent repayment agreement and the \$3,230.00 in the Application represents the amount of the security deposit. She pointed out that the rent repayment agreement explains the \$925.00 security deposit would be credited towards the rent due.

The Tenant also complained about silverfish in the rental unit and alleged there was a problem with heat in the rental unit. He testified that the lack of heat in the basement bedroom of one of his children is why they ended the fixed term tenancy early.

The Agent for the Landlord testified that when the pest control company went to the rental unit to treat for silverfish, the Tenant denied entry to the rental unit.

The Agent also submitted an inspection for the furnace which indicates the furnace was working correctly and providing the required heat for the home.

The Tenant replied that he refused entry for the pest treatment as he did not want to remove his children from the rental unit for the time period required.

The Tenant testified that he did not feel the heat was adequate in the basement for his daughter.

### Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Tenants breached the rent payment agreement and the Act, without authority to do so.

The tenancy agreement is a binding legal contract which both parties must abide by.

In British Columbia a tenancy may only end if done so in accordance with the Act. Under section 45(3) of the Act the Tenants could not end the tenancy earlier than the fixed term date of August 31, 2013, unless there was some authority under the Act for them to do so. Here the Tenants and the Landlord entered into a mutual agreement to

end the tenancy and also used a rent repayment agreement to deal with outstanding rent due.

However, I find the Tenants did not vacate the rental unit at 2:00 p.m. on November 15, 2012, as required by the Mutual Agreement to End Tenancy, based on the evidence of both parties.

I also do not interpret the rent repayment agreement as requiring the Landlord to not file an Application for Dispute Resolution until the Tenants made some breach. The wording is that the Landlord will not go forward requesting a monetary order if the Tenants do not breach the rent repayment agreement. I do not find the Landlord was precluded from filing an Application until the Tenants breached from this wording. I find it more likely that had the Tenants made the agreed upon payments the hearing would not have proceeded as it did, or in any event, they would not have been found to be in breach of the rent repayment agreement.

It is clear that the Tenants breached the Mutual Agreement to End the Tenancy by failing to vacate as promised, and they breached the rent repayment agreement by failing to make any payments. I find the Tenants had no justification to not make the rent payments they agreed to.

I also note that the Agent for the Landlord informed the Tenants via email that the hearing of the Application would be cancelled if they made the required rent payments. The Tenant testified during the hearing that they made no payments to the Landlord for the rent repayment agreement.

Based on the above, I find the Tenants breached the Mutual Agreement to End Tenancy and the rent repayment agreement. It is a breach of the Act to fail to abide by an agreement made with the Landlord.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find the breaches by the Tenants have caused the Landlord to suffer a loss.

I find that the Landlord has established a total monetary claim of **\$3,280.00**, comprised of the balance of rent for October in the amount of \$1,380.00 and the rent for November of \$1,850.00, and the \$50.00 fee paid by the Landlord for this application.

I allow the Landlord to keep the security deposit of **\$925.00** in partial satisfaction of the claim, and I grant the Landlord an order under section 67 for the balance due of

**\$2,355.00.** This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court

Conclusion

The Tenants breached a Mutual Agreement to End Tenancy and an agreement to repay the Landlord rent money due. The Landlord has established a monetary claim for rent due, the Landlord may keep the security deposit in partial satisfaction of the claim, and the Landlord has a monetary order for the balance due.

This decision is final and binding on the parties, except as 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: February 19, 2013

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Residential Tenancy Branch

