



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on October 18, 2013, by the Landlord to obtain a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep the security deposit, and to recover the cost of the filing fee from the Tenants for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlord and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order?

### Background and Evidence

The Landlord submitted evidence that he had advertised his unit for rent and the Tenants came to see the unit twice before agreeing to enter into a written tenancy agreement. The parties signed the tenancy agreement on September 25, 2013, for a month to month tenancy. Rent was to be payable on the first of each month in the amount of \$2,100.00 and the Tenants paid him \$2,100.00 which he thinks consisted of \$1,050.00 security deposit and \$1,050.00 to go towards November 2013 rent.

The Landlord testified that on October 12, 2013 the Tenants told him that they decided they did not want to rent the place because there were tenants in the basement. Then a few days later he found their written notice to end their tenancy dated October 14, 2013, in his mailbox. He re-advertised the unit right away and secured another tenant effective December 1, 2013. He is seeking to keep the \$2,100.00 for November 2013 rent.

The Tenant testified and argued that the basement suite was an illegal suite and therefore, put the house at risk for fire, no longer meeting the health and safety requirements. He then argued that the \$2,100.00 was paid for a security deposit, as noted on the tenancy agreement. He feels he should be entitled to the return of half of that payment as the Landlord was only supposed to take half the rent as a deposit. I explained to the Tenant how the \$2,100.00 is currently being held in trust by the Landlord, despite the purpose it was paid for; until such time as I determine whether it will be used to offset any award granted to the Landlord.

### Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Section 45(1) of the Act provides that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and 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 this case the Tenants provided written notice dated October 14, 2013 to end their tenancy effective October 31, 2013, which I find to be a breach of section 45(1) of the Act, as listed above. The Landlord was not able to re-rent the unit until December 1, 2013; therefore, this breach caused the Landlord to suffer a loss of rent for November 2013. Accordingly, I find the Landlord has met the burden of proof and I award him loss of rent for November 2013 in the amount of **\$2,100.00**.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

**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 Tenants' security deposit plus interest as follows:

Loss of Rent for November 2013	\$2,100.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	\$2,150.00
<b>LESS:</b> Security Deposit \$2,100.00 + Interest 0.00	<u>-2,100.00</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$ 50.00</u></b>

### Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$50.00**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced 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*.

Dated: January 22, 2014

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Residential Tenancy Branch

