



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MND; MNSD; MNR; MNDC; FF

### **Introduction**

This is the Landlord's application for a Monetary Order for unpaid rent and damages; compensation for damage or loss under the Act, regulation or tenancy agreement; to apply the security deposit in partial satisfaction of its monetary award; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

The Landlord's Application for Dispute Resolution identifies two Tenants; however, the Landlord's agent CP testified that the Tenant DF did not sign the tenancy agreement and therefore the Landlord did not serve DF with the Notice of Hearing documents. The Landlord withdrew its Application against DF and the Landlord's Application was amended to delete DF from the list of Respondents.

CP testified that she mailed the Notice of Hearing documents to the Tenant DG, by registered mail to his forwarding address, on September 18, 2014. CP testified that she sent copies of the Landlord's documentary evidence to the Tenant DG on March 26, 2015. I described the Landlord's documentary evidence to DG, who acknowledged service of the documents. DG did not provide any documentary evidence to the Residential Tenancy Branch or the Landlord.

### **Issues to be Decided**

- Is the Landlord entitled to a monetary award for unpaid rent and compensation for liquidated damages and recovery of a bonus paid to the Tenant if he occupied the rental unit for one year?
- May the Landlord apply the security deposit towards its monetary award?

### **Background and Evidence**

A copy of the tenancy agreement was provided in evidence. CP testified that the Landlord's name on the tenancy agreement changed to the current Landlord's name on March 15, 2014. This tenancy began on March 1, 2014. Monthly rent was \$825.00, due on the first day of each month. The Tenant paid a security deposit in the amount of

\$412.50 on February 26, 2014. The tenancy agreement is a one year lease, to end on February 28, 2015.

The Landlord's agent CP gave the following testimony and evidence:

CP testified that the Tenant was provided with a "move in bonus" of \$412.50, which he agreed must be paid back if the Tenant ended the tenancy before February 28, 2015. CP testified that the Tenant also agreed to pay liquidated damages in the amount of \$412.50 if he ended the tenancy before the term expired.

CP stated that the Tenant moved out of the rental unit, without notice, on September 4, 2014, and that he did not pay rent when it was due on September 1, 2014. She testified that the Tenant paid \$220.00 towards unpaid rent on September 30, 2014.

The Landlord seeks a monetary award, calculated as follows:

Unpaid rent for September, 2014	\$825.00
Less amount paid on September 30, 2014	-\$220.00
Liquidated damages	\$412.50
Move in bonus rebate	<u>\$412.50</u>
TOTAL	<b>\$1,430.00</b>

The Tenant gave the following testimony:

The Tenant testified that he lost his job and was unable to afford to live in the rental unit. He stated that he gave the building manager a letter on July 31, 2014, stating that he was moving out effective August 31, 2014. He stated that he told her he would be moving back in with his parents. The Tenant testified that the building manager told him that if he left the rental unit clean and undamaged, he would get his security deposit back. The Tenant testified that the Condition Inspection Report confirmed that there was no damage and that the rental unit was clean at the end of the tenancy. The Tenant stated that there were no showings done while he was still there. He agreed that he moved out on September 4, 2014.

The Tenant stated that he drove by the rental unit at the end of September and noticed that someone was there. He said he saw "stuff on the balcony and people in the suite".

The Tenant acknowledged that he was given \$412.50 as a "move in bonus".

The Landlord's agent CP gave the following reply:

CP denied that the Tenant gave written notice to end the tenancy effective August 31, 2014. She testified that the Landlord did not know the Tenant was moving out until he left on September 4, 2014. CP stated that the Landlord was able to re-rent the rental unit for October 1, 2014, and that the new occupant moved in a couple of days early. CP stated that the Landlord did not receive any rent from the new occupant for the early move-in.

### **Analysis**

Based on the testimony of both parties, I find that the Tenant did not pay rent in full for the month of September, and that the Landlord is entitled to the unpaid rent in the amount of **\$605.00**. The Tenant did not provide documentary evidence to support his claim that he provided written notice to end the tenancy effective August 31, 2014. In any event, the Tenant did not move out until September 4, 2014, and ended the lease before the end of the term.

With respect to the Landlord's claim for recovery of the "move in bonus", I find that the parties had an agreement that the Tenant would pay back the move in bonus if he ended the lease early. Therefore, I allow this portion of the Landlord's claim in the amount of **\$412.50**.

I dismiss the Landlord's claim for liquidated damages. Liquidated damages are a certain amount that the parties agree the Tenant must pay if the Tenant ends the tenancy early. These damages are intended for administrative costs of re-renting the rental unit. In this case, the tenancy agreement does not provide an amount to be paid for liquidated damages, and therefore I find that the liquidated damages clause is not enforceable.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of its monetary award. No interest has accrued on the security deposit.

The Landlord has been successful in its application and I find that it is entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

I hereby provide the Landlord with a Monetary Order, calculated as follows:

Unpaid rent	\$605.00
Recovery of move-in bonus	\$412.50

Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$1,067.50
Less security deposit	<u>- \$412.50</u>
<b>TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF</b>	<b>\$655.00</b>

### **Conclusion**

I hereby provide the Landlord with a Monetary Order in the amount of **\$655.00** for service upon the Tenant DG. This Order must be served on the Tenant and may be filed in the Provincial Court of British Columbia (Small Claims) 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: April 27, 2015

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Residential Tenancy Branch

