



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION AND REASONS

### Dispute Codes

MNDC & FF

### Introduction

This hearing dealt with an application by the tenant seeking damages related to the landlord's failure to uphold the tenancy agreement. Both parties were present at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to cross-examine the other party, and to make submissions during the hearing.

### Issues to be Determined

Has the tenant established a monetary claim for damage due to the landlord's breach of the tenancy agreement?

### Background and Evidence

The tenant and landlord signed a tenancy agreement on January 1, 2009. The tenancy was to begin on March 1, 2009 for the monthly rent of \$1,500.00 due on the 1<sup>st</sup> of the month. The tenant paid a security deposit of \$750.00.

The tenant stated that the landlord contacted him on February 27, 2009 seeking the rent which was owed on March 1, 2009. The tenant initially believed he could pay as requested; however, due to work he was not able to make it to the bank to get the money. He contacted the landlord and said that he could not pay on the 27<sup>th</sup> but could pay on the 28<sup>th</sup>.

According to the tenant the landlord became extremely upset and refused to honour the tenancy agreement. The tenant asked a co-worker to contact the landlord. The co-worker had a friend who spoke Punjabi, the landlord's native language, and contacted the landlord. The tenant's witness stated that the landlord believed that the tenant would always be late paying rent and decided to not rent the unit. The witness stated that they pleaded with the landlord on the tenant's behalf but the landlord would not change his mind.

The tenant stated that it was his understanding that the landlord would not rent the unit. The landlord returned the security deposit on February 28, 2009.

The landlord denies the tenant's allegations and denies speaking with the tenant's witness. However, the landlord subsequently acknowledged speaking to the tenant's witness but did not agree to substance of the conversation.

The landlord alleged that it was the tenant who contacted him to pay the rent on February 27, 2009 and to get the keys to the rental unit early. The landlord submitted that when he met with tenant and the tenant did not have the money he would not give the tenant the keys to the rental unit. The landlord says that the tenant said he would not rent the unit and demanded the damage deposit back.

The tenant denies the landlord's allegations. The tenant is seeking damages due to the landlord refusing to grant him possession of the rental unit. The tenant seeks the following damages:

Cost of U-haul rental	\$60.00
Cost of (new) apartment rental	\$1,720.00
Cost of storing belongings	\$190.00
Return of liquidated damages f	\$860.00
Damage due to stress	\$2,000.00
Recovery of filling fee paid for this application	\$50.00
<b>Total</b>	<b>\$4,880.00</b>

The tenant explained that his family and his brother's family were going to occupy the rental unit and both had to find new living accommodations when the landlord breached the tenancy agreement. The tenant had to pay liquidated damages for ending his former fixed term tenancy and the whole family had to occupy a one bedroom apartment after the landlord refused to fulfill the tenancy agreement.

### Analysis and Findings

I have carefully considered the oral testimony and documentary evidence presented for this proceeding and find that the tenant has established a monetary claim due to the landlord's breach of the tenancy agreement.

I have accepted the tenant's evidence over the evidence of the landlord. I do not accept the landlord's version of events and I accept that the landlord illegally ended this tenancy on February 27, 2009. I accept that the landlord was upset that the tenant was unable to pay the rent on that date as requested and decided to no longer rent the unit to the tenant.

I reject the landlord's claim that it was the tenant who was requesting to pay the rent early and then seeking to receive the key to the rental unit early. I accept the tenant's evidence that they had cancelled their fixed term lease with their former landlord so they could take this rental unit on March 1, 2009 as agreed to. I accept the tenant's evidence that when he could not pay rent on February 27, 2009 as requested by the landlord, the landlord took the position that he would not rent to the tenant.

Section 16 of the *Act* states:

- 16** The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Section 7 of the *Act* states:

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.  
 (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I find that the landlord breached the tenancy agreement by failing to provide the tenant with possession and occupation of the rental unit on March 1, 2009. Due to this breach the landlord is liable to the tenant's loss and damages.

I grant the tenant a monetary claim for the sum of **\$4,450.00** comprised of the following:

- \$1,720.00 representing two months rent at \$860.00 per month for the apartment the tenant was able to secure effective March 1, 2009 after the landlord breached the tenancy agreement;
- \$250.00 for moving and storage costs the tenant had to pay;
- \$2,000.00 in aggravated damages due to the stress caused by the landlord's breach of the *Act* which I accept caused significant distress and hardship for the tenant;
- Recovery of the security deposit of \$430.00 the tenant paid to the previous landlord and allowed the previous landlord to retain so that the tenant could end the fixed term lease early to take the rental unit under this tenancy agreement and
- \$50.00 to recover the filling fee paid for this application.

I grant the tenant a monetary Order for the sum of **\$4,450.00**. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

### Conclusion

I grant the tenant's application and award the tenant compensation due to the landlord's breach of the tenancy agreement and *Act*.

Dated June 23, 2009.

---

Dispute Resolution Officer