



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

### Dispute Codes:

MNDC, MNSD, FF

### Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for money owed or compensation for damage or loss; to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant via registered mail at the service address noted on the Application, on October 15, 2010. The Landlord stated that the service address used was provided to her by the Tenant as a forwarding address on September 30, 2010. On the basis of the Landlord's testimony and in the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

### Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for loss of revenue experienced due to the Tenant vacating without proper notice to end the tenancy; to keep all or part of the security deposit; and to recover the filing fee for this Application for Dispute Resolution from the Tenant, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The Landlord submitted a copy of a tenancy agreement that indicates the tenancy began on June 04, 2010; that the Tenant was required to pay monthly rent of \$800.00 on the first day of each month; and that the Tenant paid a security deposit of \$400.00 on June 02, 2010. The tenancy agreement appears to be signed by the Tenant and the female Landlord.

The Landlord stated that on September 01, 2010 the Tenant provided verbal notice of her intent to vacate the rental unit on October 01, 2010. She stated that the Landlord

requested written notice however it was never provided. She stated that the Tenant vacated the rental unit on October 01, 2010.

The Landlord stated that she began advertising the rental unit in local newspapers in early September and advertised continually until the last week in December of 2010. She stated that the rental unit was recently re-rented.

The Landlord is seeking compensation, in the amount of \$800.00, for revenue lost during the month of October.

### Analysis

I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$800.00 on the first day of each month until such time as this tenancy was ended in accordance with the *Act*.

Section 44(1)(a) of the *Act* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 45, 46, 47, 48, 49, 49.1, and 50 of the *Act*. The evidence shows that neither party gave proper written notice to end this tenancy in accordance with these sections and I therefore find that the tenancy did not end pursuant to section 44(1)(a) of the *Act*.

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. As there is no evidence that this was a fixed term tenancy, I find that the tenancy did not end pursuant to section 44(1)(b) of the *Act*.

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. As there is no evidence that the parties agreed in writing to end the tenancy, I find that the tenancy did not end pursuant to section 44(1)(c) of the *Act*.

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. I find that this tenancy ended when the Tenant abandoned the rental unit on October 01, 2010.

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. As there is no evidence that this tenancy agreement was frustrated, I find that the tenancy did not end pursuant to section 44(1)(e) of the *Act*.

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. As there is no evidence that the director ordered an end to this tenancy, I find that the tenancy did not end pursuant to section 44(1)(f) of the *Act*.

I find that the Tenant failed to comply with section 45 of the *Act* when she failed to provide the Landlord with written notice of her intent to end the tenancy. I find that the Tenant's failure to comply with section 45 of the *Act* prevented the Tenant from entering into a new tenancy agreement with another occupant for October 01, 2010, as the

Landlord did not know, with reasonably certainty, that the Tenant would vacate the rental unit on October 01, 2010. In the absence of written notice, the Tenant could have remained in the rental unit after October 01, 2010 and the Landlord would have had no legal right to take possession of the rental unit. I therefore find that the Tenant must pay \$800.00 to the Landlord for the loss of revenue that the Landlord experienced in October of 2010.

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

### Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$850.00, which is comprised of \$800.00 for loss of revenue and \$50.00 for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenant's security deposit, in the amount of \$400.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$450.00. 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.

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: February 10, 2011.

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Residential Tenancy Branch