



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes                      MNDC, O

### Introduction

This matter dealt with an application by the tenant to obtain a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, and other issues.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent by registered mail to the landlord on March 10, 2011. The landlord confirmed receipt of the hearing documents. Both Parties agree that the spelling of the landlords' first name is incorrect on the application and agree to it being amended to the correct spelling.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

Both Parties agree that this tenancy started on December 01, 2010 and the tenant vacated the rental unit on December 27, 2010. The Parties also agree that this was a fixed term tenancy which was due to end on April 30, 2011. Rent for this unit was \$1,000.00 per month and the

tenant paid \$5,000.00 rent in advance for the term of the tenancy agreement at the start of the tenancy.

The tenant testifies that due to an unforeseen medical condition she had to end her tenancy within the first month and notified the landlord of this and asked her to return her rent of \$4,000.00 for the remaining four months. The tenant testifies that the landlord refused to return her rent. The tenant seeks an Order for the landlord to return her rent on compassionate grounds.

The landlord testifies that she entered into a fixed term tenancy with the tenant and as such if the tenant cannot fulfill the terms of the fixed term lease the landlord may keep the rent paid. The landlord also testifies that she has made many attempts to re-rent the unit and has advertised it on rental sites throughout British Columbia and Alberta; she has advertised it in local newspapers, with flyers and with a sign on the fence. The landlord also states as she works in a real estate office it has also been advertised there. She states this is a unit that is easily rented in the summer months due to its location but she has found it difficult to re-rent at this time due to the area having had a lot of snowfall this winter. The landlord also states she will consider taking a lower rent or a short term lease for the unit if she can re-rent it in order to mitigate the tenants' loss. The landlord states if she is able to re-rent it before the end of the fixed term she will refund any portion of the tenants rent to her.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. The tenant has requested I order the landlord to return her rent of \$4,000.00 on compassionate grounds; however, there is no provision under the *Act* to allow me to do this. I refer both Parties to s. 45 of the *Act* which states: *A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*

*(a) is not earlier than one month after the date the landlord receives the notice,*

*(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*

*(c) 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.*

With this in mind it is clear that a tenant cannot end a fixed term tenancy until after the end of the term which in this case would be April 30, 2011. The Residential Tenancy Policy Guidelines say that any damages a landlord would be entitled to would be an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. Therefore, as the tenant could not legally end the tenancy until May 01, 2011 the landlord is entitled to keep rent paid for this fixed term period. I am satisfied that the landlord has made attempts to re-rent the unit but has so far been unsuccessful. If however the landlord is able to re-rent the unit for any period prior to April 30, 2011 she must return that portion of rent to the tenant.

Consequently the tenants' application to recover \$4,000.00 for rent paid in advance is dismissed.

#### Conclusion

The Tenant's application is dismissed with leave to reapply in the event the unit is re-rented before April 30, 2011 and the landlord has not refunded any portion of rent to her.

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: March 30, 2011.

---

Residential Tenancy Branch