



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNDC, MNSD; FF

### **Introduction**

This is the Landlord's application to retain the security deposit in compensation for lost revenue; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

The Landlord LM testified that she mailed the Notice of Hearing documents to the Tenant, via registered mail, to the address the Tenant gave as a forwarding address, on January 19, 2011.

### **Issues to be Decided**

- Is the Landlord entitled to a monetary award for loss of revenue for a portion of the month of January, 2011?
- Disposition of the security deposit and pet damage deposit.

### **Background and Evidence**

This tenancy began on May 1, 2009. A copy of the tenancy agreement was provided in evidence. Monthly rent was \$1,500.00. The Tenant paid a security deposit in the amount of \$750.00 and a pet damage deposit in the amount of \$250.00 at the beginning of the tenancy, for a total of \$1,000.00 in deposits.

The Landlord has retained both deposits and filed her application against the deposits on January 14, 2011.

The Landlord LM gave the following testimony:

The rental unit is a house that was rented by the Tenant as a single family dwelling. After the Tenant moved out, the house was rented out to 4 students, with four separate tenancy agreements, as shared accommodation. The rent paid by these students totals \$1,600.00 per month.

The Tenant knew that the Landlord was converting the house to student accommodation or to a school. The Landlord told the Tenant that he and his family needed to move out in September, 2010, because the Landlord needed the house for incoming students. The Tenant asked if they could stay longer. There was no agreement with respect to when the tenancy would end.

In mid-November, 2010, the Tenant gave the Landlord verbal notice that he had purchased a home and that his family would be moving out at the end of December, 2010, or the end of January, 2011.

The Tenant paid full rent for the month of December, 2010 and moved out of the rental unit on December 16, 2010, without providing proper written notice. The Landlord was not able to rent out two of the rooms until February 1, 2011, and is seeking compensation from the Tenant for the Landlord's loss of revenue in the amount of \$750.00. The parties met to perform a move out condition inspection on December 31, 2010. There was no damage to the rental unit.

The Tenant gave the following testimony:

The tenancy agreement signed by the Landlord on April 1, 2009 and by the Tenant on April 7, 2009, was a one year lease. In September, 2010, the Landlord asked the Tenant when they would be moving out. The Tenant told her he would commit to stay until the end of January, 2011, and asked the Landlord to write an extension to the lease to show the end-of-tenancy date, but the Landlord didn't wish to do so.

At the beginning of November, the Landlord told the Tenant that she had students who were ready to move into the rental unit on January 1, 2011. The Tenant told the Landlord he would do his best to be out by the end of December, 2010. A couple of

weeks later, the Tenant told the Landlord that they would be able to move out of the rental unit by January 1, 2011. The Tenant believes that at that point the Landlord advised the two students that they could move in on January 1, 2011. The Tenant provided a letter from one of the students stating that he gave his notice to his former landlord in November, 2010, in order to move into the rental unit for January 1, 2011.

The Tenant worked hard getting the rental unit ready for move-out, including fresh paint, and thorough cleaning. At the same time his family was getting their new home ready for them to move in. The Tenant did all this to accommodate the Landlord. He would have been happy to stay until the end of January, 2011. On December 29, 2010, the Tenant contacted the Landlord to set a date for the move out inspection and to get the deposits back. The Landlord told the Tenant he would not be getting the deposits back because he did not give sufficient notice.

The Tenant submitted that the Landlord did not have a right to rent out the rooms for January 1, 2011, and that his family only moved out in December in order to accommodate the Landlord and her students. The Tenant stated that he and the Landlord had a verbal agreement that he would move out on December 31, 2010, and not pay any rent for January, 2011. He stated that otherwise, he would have given proper notice, paid January's rent and had another month to move into his new house, which was not ready for occupancy until January 7, 2011.

### **Analysis**

It is important to note that the tenancy agreement provided in evidence states, "This shall be a **month-to-month tenancy** which shall begin on May 1, 2009, for **one year lease** (and in the case of a long term tenancy end on May 31, 2010)." This clause is vague and contradictory. A tenancy cannot be periodic (month-to-month) and a term tenancy (lease) at the same time. Section 6(3) of the Act states:

**6** (3) A term of a tenancy agreement is not enforceable if

- (a) the term is inconsistent with this Act or the regulations,
- (b) the term is unconscionable, or
- (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

Therefore, I find that this was a month to month tenancy. A tenant can end a month to month tenancy by providing the landlord with one month's written notice. A landlord cannot end a month to month tenancy, except under the provisions of Section 46 (unpaid rent); 47 (cause); 48 (end of employment); 49 (landlord's use of property); or 49.1 (tenant ceases to qualify for rental unit).

The Landlord intended to convert the rental unit into student accommodation but did not provide the Tenant with a Notice under Section 49. I find that the Landlord pressured the Tenant into moving out of the rental unit without providing the Tenant with due Notice, and therefore the Landlord's application for compensation is dismissed.

The Landlord is holding the Tenant's security deposit and pet damage deposit in the total amount of \$1,000.00. No interest has accrued on the deposits. I order that the Landlord return the deposits to the Tenant within 15 days of receipt of this Decision.

The Landlord has not been successful in her claim and is not entitled to recover the cost of the filing fee from the Tenant.

### **Conclusion**

I hereby provide the Tenant a Monetary Order in the amount of \$1,000.00 for service upon the Landlord. This Order 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: June 06, 2011.

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Residential Tenancy Branch