



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MND, MNR, 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; a monetary Order for unpaid rent; a monetary Order for damage to the rental unit; 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.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

At the outset of the hearing the Agent for the Landlord applied to amend the Application for Dispute Resolution to reflect the correct name of the Landlord. The Application for Dispute Resolution has been amended to reflect the name of the Landlord as it is recorded on the tenancy agreement that was signed by both parties.

### Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for expenses incurred as a result of a premature end to a fixed term tenancy agreement; to compensation for repainting the rental unit; 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 and the Tenant agree that the parties entered into a fixed term tenancy that began on September 01, 2010 and was to continue until August 31, 2011; that the Tenant was required to pay monthly rent of \$880.00 on the first day of each month; that the Tenant paid a security deposit of \$440.00; that the Tenant advised the Landlord, via email, that she wished to end the tenancy on January 31, 2011; and that the Tenant vacated the rental unit on January 31, 2011 or February 01, 2011.

The Agent for the Landlord stated that the Tenant did not provide the Landlord with a forwarding address, in writing, after she vacated the rental unit. He stated that the Landlord sent documents to the Tenant at her parent's address, which was provided to them prior to the start of the tenancy. The Agent for the Tenant does not know if the Tenant provided the Landlord with her forwarding address in writing when she vacated the rental unit.

The Landlord stated that she started advertising the rental unit on two popular websites sometime in February of 2011; that she regularly updated the websites; that she has advertised continually on those websites; and that the rental unit is still advertised on those websites. The Landlord submitted no evidence to corroborate these statements nor did she provide any specific regarding dates the advertisements were initiated or updated.

The Agent for the Landlord stated that they received at least one response to the advertisements but the prospective tenant was not suitable, as the tenant only wished to rent the unit for one month; the tenant was not willing to pay the amount of rent being asked; and the tenant wished to occupy the rental unit with at least one other occupant.

The Agent for the Tenant stated that the Tenant also advertised the rental unit on a popular website prior to vacating the rental unit; that they received a response from two prospective tenants; that the Tenant advised the Landlord of one prospective tenant via email; and that the Landlord did not respond to their email. The Landlord submitted no evidence to corroborate this statement.

The Agent for the Landlord stated that the Landlord did not receive an email from the Tenant about a prospective new tenant.

The Agent for the Tenant argued that he believes it is highly unlikely that the Landlord would not have received more responses to her advertisements.

The Landlord is seeking compensation for loss of revenue for the period between February 01, 2011 and August 31, 2011, in the amount of \$6,160.00, which is the rent she would have collected if the tenancy continued until the end of its fixed term.

In the email the Tenant sent to the Landlord advising the Landlord of the Tenant's intent to vacate the rental unit, the Tenant outlined a variety of deficiencies with the rental unit. The Tenant contends that these deficiencies were sufficient cause to end this tenancy early. The parties were advised that the nature of the deficiencies outlined in the email were not cause to end a fixed term tenancy prematurely and that the appropriate remedy for deficiencies of this nature was to file an Application for Dispute Resolution in which the Tenant applied for an Order requiring the Landlord to comply with the *Act*. Neither party was permitted to give evidence regarding deficiencies with the rental unit, as those deficiencies were not relevant to my decision in this matter. The Tenant retains the right to file an Application for Dispute Resolution seeking compensation for losses arising out of this tenancy.

The Landlord is seeking compensation, in the amount of \$200.00, for repainting the rental unit. The Agent for the Landlord stated that it is the Landlord's policy to repaint rental units at the end of the tenancy and that they repainted this unit even though the Tenant did not cause unusual damage to the walls.

### Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$880.00 on the first day of each month. I find that this tenancy began on September 01, 2010 and that the fixed term tenancy was to continue until August 31, 2011.

I find that the Tenant did not comply with section 45(2) of the *Act* when she ended this fixed term tenancy at the end of January, which is a date that was earlier than the end date specified in the fixed term tenancy agreement. In the absence of evidence to the contrary, I accept that the Landlord has not re-rented the rental unit and that she has lost revenue income of \$5,200.00 for the months of February, March, April, May, June, and July of 2011.

Section 67 of the *Act* authorizes me to order a tenant to pay compensation to a landlord if the landlord experiences a loss arising from a tenant's failure to comply with the *Act*. In some circumstances, this includes compensation arising from revenue lost when a fixed term tenancy is ended prematurely.

Section 7(2) of the *Act* stipulates that a landlord who claims compensation for loss that results from a tenant's non-compliance with the *Act* must do whatever is reasonable to minimize the damage or loss. As this is the Landlord's claim for compensation, the Landlord bears the burden of proving she has taken reasonable steps to re-rent the rental unit.

I find that the Landlord has submitted insufficient evidence to establish that she diligently advertised the rental unit. Although the Landlord testified that she advertised the rental unit on two popular websites in February, she provided no evidence to corroborate that statement, although documentary evidence should have been readily available. I further note that she was unable to provide the date when she first advertised the rental unit, which reduces the veracity of her testimony.

Although the Landlord testified that she advertised continually on these websites and that she updated the advertisements regularly, she provided no evidence to corroborate that statement, although documentary evidence should have been readily available. As I find it unusual that a rental unit that is diligently advertised and reasonably priced would remain vacant for six months in this rental market, I am not inclined to accept the Landlord's testimony without documentary evidence that corroborates that she continually updated the advertisements.

For these reasons, I find that the Landlord failed to establish that she took reasonable steps to mitigate her losses. I therefore dismiss the Landlord's claim for compensation for lost revenue for the period between March 01, 2011 and August 31, 2011.

I allow the Landlord's claim for lost revenue for the month of February of 2011. As the Tenant did not have the right to end this fixed term tenancy prematurely, even with written notice, I find that the Landlord could not reasonably advertise the rental unit until it had been vacated. Given that the rental unit was not vacated until January 31, 2011 or February 01, 2011 it would be highly unlikely, if not impossible, for the landlord to find a new tenant for February 01, 2011.

Section 37(2)(a) of the *Act* stipulates that a tenant must leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear, at the end of the tenancy.

I find that the Landlord has failed to establish that the Tenant damaged the rental unit beyond reasonable wear and tear, and I therefore dismiss the Landlord's claim for repainting the rental unit.

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 \$930.00, which is comprised of \$880.00 for loss of revenue from February of 2011 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 retain the Tenant's security deposit, in the amount of \$440.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$490.00. 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: July 13, 2011.

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Residential Tenancy Branch