



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, FF

### Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for compensation for a loss of rental income and to recover the filing fee for this proceeding.

### Issue(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for a loss of rental income and if so, how much?

### Background and Evidence

This fixed term tenancy started on October 1, 2010 and was to expire on October 1, 2011. Rent was \$1,100.00 per month payable in advance on the 1<sup>st</sup> day of each month.

The Parties agree that in late-December 2010, the Tenant advised the Landlord that she would be moving out due to her allergies. The Tenant said there had been a smoker and a cat in the rental unit previously and the Landlord had not cleaned the carpets at the beginning of the tenancy. The Landlord said she offered to have the carpets professionally cleaned and to install an air cleaner but the Tenant declined. The Landlord advised the Tenant that she could not just end the tenancy but would have to find another tenant to take over the unexpired term of her lease. The Tenant said she advertised the rental unit in online publications and found a person in January 2011 who wanted to take over the lease but she also wanted to paint the rental unit. The Tenant said she asked the Landlord if it would be okay to re-paint and at that time the Landlord told her that she would have to ask any new sub-tenant for rent of \$1,150.00 to cover an increase in the cost of strata fees.

The Tenant said she lost this potential new tenant because she was unwilling to pay the increased rent. The Tenant said she continued to advertise the rental unit at the increased amount and did showings but was unable to find another tenant. The Tenant said that after paying 3 months of rent for a rental unit in which she was not living, she put a stop payment on her rent cheque for April 2011. The Tenant argued that the

Landlord failed to take any steps to re-rent the rental unit. The Landlord said she tried discovered on April 11, 2011 that the Tenant had put a stop payment on her rent cheque and tried to contact her but the Tenant would not return her calls. The Landlord said she was able to enter into a new tenancy agreement on April 16, 2011 with a person who resided in a neighbouring unit however that person could not start the tenancy until June 1, 2011. The Landlord said she was able to keep the rent at \$1,100.00 per month because her blended mortgage and property tax payment was reduced by that time.

### Analysis

Section 45(2) of the Act says that a tenant of a fixed term tenancy cannot end the tenancy earlier than the date set out in the tenancy agreement as the last day of the tenancy. If a tenant ends a tenancy earlier, they may have to compensate the landlord for a loss of rental income that he or she incurs as a result. Section 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize the amount of lost rental income.

I find that the Tenant moved out of the rental unit at the beginning of January 2011 with the Landlord's knowledge and that the tenancy ended on April 11, 2011 when the Landlord discovered that the Tenant would not make any further rent payments. I also find that the Tenant lost a prospective sub-tenant in January 2011 because the Landlord advised the Tenant at this time that the Tenant would have to ask for rent of \$1,150.00 in order to cover the Landlord's increased strata fees. Although the Landlord argued that the Tenant did not try to negotiate the rental amount with her in an attempt to keep this sub-tenant, I find that this argument is without merit because the Landlord was not permitted under the Act to seek an increase in the rent during the term of this lease. I also find that the Landlord knew as of January 2011 that the Tenant was no longer residing in the rental unit and could not afford to pay the rent but took *no steps* to find a new tenant until the Tenant stopped paying the rent on April 11, 2011 and at that time she took the first offer that came along on April 15, 2011 (for June 1, 2011).

In the circumstances, I find that the Landlord is entitled to unpaid rent for the period, April 1 – 11, 2011, in the prorated amount of \$403.33. However, I find that the Landlord is not entitled to be compensated for a loss of rental income for the balance of April and May 2011 because the Landlord failed to mitigate her damages. In particular, I find that the Tenant's efforts to re-rent the rental unit in January 2011 and thereafter were frustrated in part by the Landlord seeking to increase the rent when she was not entitled to do so and in part due to the Landlord's failure to take any steps to re-rent the rental unit from January to mid-April 2011. Consequently, the Landlord's application for a loss of rental income is dismissed without leave to reapply.

As the Landlord has only been partially successful in this matter, I find pursuant to s. 72(1) of the Act that she is entitled to recover ½ of the filing fee for this proceeding or \$25.00. However, I find that there is no authority under the Act to award the Landlord her costs for registered mail and parking expenses and that part of her claim is also dismissed without leave to reapply.

### Conclusion

A Monetary Order in the amount of **\$428.33** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: August 29, 2011.

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Residential Tenancy Branch