



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

**OPB, MNSD, MNDC, FF**

### **Introduction**

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application requesting compensation for damage or loss under the Act, to retain the deposit and an Order of possession as the result of a breach of an agreement. Both parties provided affirmed testimony and were given the opportunity to ask questions about the hearing process.

The female tenant attended the hearing. The male tenant was served with Notice of this hearing sent via registered mail on October 19, 2011, to a forwarding address provided to the landlord, in mid-September, 2011; on October 19, 2011. The landlord has a Canada Post receipt and tracking number.

These documents are deemed to have been served in accordance with section 89 of the *Act*; however the male tenant did not appear at the hearing.

### **Preliminary Matters**

As the tenants vacated the rental unit on September 30, 2011, an Order of possession was no longer required.

The landlord testified that she submitted evidence to the Residential Tenancy Branch; however this evidence was not before me. The landlord confirmed that the hearing package was served to the tenants; however, evidence submissions were not given to the tenants, as the landlord believed they possessed the documents. In the absence of service of identical evidence packages to each of the tenants, I set aside the landlord's evidence.

The tenant and landlord were asked to submit a copy of a mutual agreement to end the tenancy, signed by both tenants and the male landlord.

The landlord was asked to submit a copy of the tenancy agreement and the August 22, 2011, letter from the tenants giving notice they were ending their fixed-term tenancy.

The requested documents were provided.

Issue(s) to be Decided

Is the landlord entitled to loss of rent revenue in the sum of \$600.00, plus \$40.00, damage or loss?

May the landlord retain the deposit in satisfaction of the claim?

Is the landlord entitled to filing fee costs?

Background and Evidence

This one year fixed-term tenancy commenced on April 1, 2011, rent was \$750.00 due on the first day of each month. A deposit in the sum of \$1,500.00 was paid; the tenants paid one half of September, 2011 rent, as provided by the Act, when a deposit exceeds the maximum allowed. The landlord continues to hold a \$750.00 deposit.

The parties agreed that on August 22, 2011, the tenants gave the landlord written Notice they would vacate the unit on October 1, 2011.

The tenant testified that on September 1, 2011, the male landlord signed a mutual agreement ending the tenancy effective September 1, 2011. The landlord stated she had not signed this document and did not have a dated copy before her. The landlord's copy of the mutual agreement to end a tenancy, submitted at my request, indicated that both tenants and the male landlord signed an agreement ending the tenancy. The landlord's copy did not indicate a vacancy date; the copy submitted by the tenant indicated a tenancy end of September 1, 2011.

The female tenant vacated the unit on September 1, 2011; the tenancy continued with the male tenant in the unit until October 1, 2011, when he vacated.

The landlord has requested loss of rent revenue for the balance of the term of the fixed-term tenancy, to April, 2012, in the sum of \$100.00 per month, as they re-rented the unit for \$100.00 less per month, effective October 1, 2011.

The landlord advertised the unit commencing the beginning of September, 2011; at the same rent and by mid-September they reduced the rent by \$100.00. No copies of advertisements were supplied; the landlord stated they used the university service and popular web sites. They did have a number of showings; dates were not provided.

The landlord claimed carpet cleaning costs in the sum of \$30.00 and advertising costs in the sum of \$10.00; no verification of these costs were supplied.

## Analysis

Section 45(2) of the Act provides:

*(2) 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.*

In other words; a tenant may not end a fixed-term tenancy prior to the end date of the tenancy agreement end. When the tenants gave written notice ending their tenancy, they breached the Act. If the tenants had vacated the unit, in the absence of a mutual written agreement to do so; the landlord would have been in the position to claim compensation for any legitimate loss of rent revenue. The landlord had an expectation that the tenants would remain in the unit, to fulfill their obligation.

I have reviewed the copy of the mutual agreement to end a tenancy submitted by both parties. The document was signed by the male landlord and both tenants. The portion of the agreement that set out the date upon which the tenants would vacate the premises was not completed on the landlord's copy; the tenant's copy indicated that tenants were to vacate the unit on September 1, 2011. The landlord submitted that the tenants had added a date to their document; which was different than the date provided in their notice given on August 22, 2011.

Section 44(1)(c) allows parties to mutually agree to end a tenancy. The landlord stated they signed a mutual agreement to end the tenancy in recognition of the tenant's notice given. The landlord could then be provided with vacant possession of the unit. It is difficult to discern whether the date added to the tenant's copy of the mutual agreement was made by the tenant's hand or the landlord's. Even if I were to find that the tenants added the date and the mutual agreement was of no force, the outcome of my decision in relation to the monetary claim would remain the same.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find, in the absence of verification of the landlord's claim for carpet cleaning and advertising costs, that portion of the claim is dismissed.

I find, in the absence of copies of advertisements that demonstrated the rent requested and when the rent amount was altered, that the claim for loss of rent revenue is dismissed. There was no evidence before me of any advertising that occurred, what rent was included in the advertisements, how many people viewed the unit and when viewing occurred. The landlord was able to mitigate their loss by quickly locating new occupants, but evidence supporting then need to reduce the rent was not supplied. In the absence of evidence that demonstrated the need to so quickly reduce the rent I find that the landlord has failed, on the balance of probabilities, to prove that it was necessary to reduce the rent requested.

Therefore, I find that the claim for loss of revenue is dismissed.

The landlord applied claiming against the deposit within 15 days of October 1, 2011.

As the landlord's claim is dismissed, as suggested by Residential Tenancy Branch policy, I Order the landlord to return the deposit in the sum of \$750.00, to the tenants; forthwith. I have issued a monetary Order to the tenants and copies will be sent to the female tenant who was present at this hearing.

### Conclusion

The landlord's claim is dismissed.

The landlord is ordered to return the deposit in the sum of \$750.00 to the tenants.

Based on these determinations I grant the tenants a monetary Order in the sum of \$750.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, 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: January 10, 2012.

---

Residential Tenancy Branch