



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD and FF

### Introduction

This application was brought by the landlord on December 5, 2011 seeking a monetary award for loss of rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed. This claim arises because the tenants did not move into the rental unit after signing a fixed term rental agreement.

Despite having been served with the Notice of Hearing sent by registered mail on December 8, 2011, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, it proceeded in their absence.

### Issue(s) to be Decided

Did the tenants breach the fixed term agreement a loss to the landlord? Did the landlord take reasonable measures to minimize the loss?

### Background and Evidence

The landlord submitted into evidence a copy of a fixed term rental agreement signed on October 18, 2011 set to run from November 1, 2011 to October 31, 2012. Rent was \$850 per month and the tenants paid a security deposit of \$425.

During the hearing, the landlord gave evidence that, within one week of signing the agreement, the male tenant left a telephone message that a family tragedy had made it necessary for the couple to return to Ontario and they would not be able to proceed with the tenancy.

The landlord stated that they had been unable to find new tenants for the one-bedroom unit in a building with approximately 100 units, until a new tenancy to begin on March 1, 2012.

The landlord stated that her company runs generic ads perpetually on Craigslist and Kijiji and site signage but has provided no documentary evidence of such advertising.

The landlord claims loss of rent from November 1, 2011 to February 29, 2012 at \$850 per month for a total of \$3400, plus recovery of \$50 filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

### Analysis

Section 7(1) of the *Act* provides that, if either party to a rental agreement suffers a loss due to the other party's non-compliance with the legislation or rental agreement, then the non-compliant party must compensate the other for that loss. I find as fact that the tenants did breach the rental agreement resulting in a loss to the landlord.

However, section 7(2) of the *Act* provides that a party making such a claim must do whatever is reasonable to minimize their loss. In the present matter, given the unusual length of time it took the landlord to find new tenants, I would expect to see evidence of some concerted effort to minimize the loss.

The landlord stated that the vacancy rate in the building has been higher than usual and that the unit in question is a one bedroom right on the road, compared to a number of two bedroom units that have been available with better views.

I find that a general reference to generic advertising does not constitute sufficient evidence to address a vacancy of four months and a claim of this size.

I will accept on the balance of probabilities that the landlord lost the rent for November 2011 as a result of the tenants' unfulfilled commitment to the tenancy. However, in the absence of documentary proof of an effort to find new tenants proportionate to the claim, I find that the landlord has fallen short in the duty to minimize the loss.

Therefore, the claim for loss of rent for December 2011, and January and February 2012 is dismissed.

I find that, in addition to the loss of rent for November 2011, the landlord may recover the filing fee for this proceeding from the tenants and retain the security deposit in set off against the balance.

Thus, I find that the tenants owe to the landlord an amount calculated as follows:

Loss of Rent for November 2011	\$850.00
Sub total	\$900.00
Less retained security deposit (No interest due)	<u>- 425.00</u>
<b>TOTAL</b>	<b>\$475.00</b>

### Conclusion

In addition to authorization to retain the tenant's security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for \$475.00 for service on the tenants.

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: February 15, 2012.

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Residential Tenancy Branch