



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**MNDC, MNSD, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for loss of rent revenue, 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 present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Preliminary Matters

The landlord did not make any written evidence submissions. The landlord confirmed receipt of the tenant's written evidence, within the required time-frames.

### Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$1,650.00 for the loss of February, 2012, rent?

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

Is the landlord entitled to filing fee costs?

### Background and Evidence

The parties agreed to the following facts:

- The 12 month fixed-term tenancy commenced on October 1, 2011;
- Rent of \$1,650.00 was due on the last day of each month;

- That in early January 2012, the tenant told the landlord she was moving out and on January 21, 2012, the tenant gave the landlord written notice effective January 31, 2012;
- That the tenant did not give the landlord her written forwarding address; and
- That by mid-February, 2012, the occupant of the lower rental unit had moved into the tenant's unit.

The landlord stated that once he knew the tenant was moving out he advertised on a popular internet web site; he could not recall the dates this occurred. He had also agreed to allow the occupant of the lower unit to take possession of the tenant's unit. The landlord stated he had told the occupant he could move items into the unit during February but that he could not take possession until March 1, 2012; By mid-February he had moved into the upper unit.

The landlord stated he did not receive rent for the upper unit, for the month of February, 2012.

The tenant stated that the landlord had agreed to allow the occupant of the lower unit to take possession of her unit and that she also had other people interested in moving into the unit. The tenant believes that the landlord had agreed to allow the occupant to take possession of her unit and that no loss occurred. The landlord had been planning on doing renovations to the lower unit, so the vacancy suited him.

The landlord stated he did not complete any renovations to the lower unit.

### Analysis

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.

Section 7 of the Act provides:

#### ***Liability for not complying with this Act or a tenancy agreement***

- 7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
- (2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the*

*regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

Section 45 of the Act prohibits a tenant ending a fixed-term tenancy, unless the landlord has failed to comply with a material term of the tenancy; there was no evidence before me that this was the case. Therefore, I find that the tenant did not have the right to end the tenancy as she did.

I have then considered the landlord's claim for compensation made as the result of the tenant's breach of the Act. The landlord has a responsibility to mitigate any claim that he makes, such as advertising the unit as soon as he was given written notice ending the tenancy. The landlord could not provide any dates he began advertising, no details of the advertisement was provided and no information on any response to the advertisement was submitted.

I also considered the fact that the occupant from the lower unit took possession of the unit in mid-February. It makes no sense that the landlord would have advertised the unit when he had agreed to allow the occupant to take possession of the unit. By mid-February the occupant had moved into the unit. Whether he paid rent for that unit or not; this occupancy appears to contradict any stated intention to advertise the unit for occupancy effective February 1, 2012.

However, the tenant gave the landlord written notice at a point in the month when it would have been very difficult for the landlord to identify a new occupant for February 1, 2012. Therefore, as the landlord did have a new occupant effective mid-February, 2012, I find that the landlord has suffered a loss equivalent to one half February rent in the sum of \$825.00; the balance of the claim is dismissed. I find that the landlord would not have been faced with any loss of revenue if the tenant had not breached the Act and that the period of time left to advertise for new occupant was minimal.

As the application has merit I find that the landlord is entitled to filing fee costs.

The landlord will retain the \$825.00 deposit in partial satisfaction of the claim.

### Conclusion

I find that the landlord has established a monetary claim, in the amount of \$875.00, which is comprised of \$825.00 loss of February, 2012, rent revenue and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution. The balance of the claim is dismissed

The landlord will be retaining the tenant's security deposit in the amount of \$825.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$50.00. 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: April 17, 2012.

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Residential Tenancy Branch