



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR / MNDC, MNSD, FF

### Introduction

This hearing concerns the landlord's application for a monetary order as compensation for unpaid rent / loss of rental income, retention of the security deposit, and recovery of the filing fee. Both parties participated and / or were represented in the hearing and gave affirmed testimony.

### Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement, the one (1) year fixed-term of tenancy is from June 1, 2011 to May 31, 2012. Monthly rent of \$1,200.00 is due and payable in advance on the first day of each month, and a security deposit of \$600.00 was collected. A move-in condition inspection report was completed with the participation of both parties.

By letter dated sometime in February 2012, the tenants gave notice to end the tenancy effective March 15, 2012. There is no dispute that rent was paid in full to the end of March 2012. Thereafter, as a result of rent which remained unpaid when due on April 1, 2012, the landlord issued a 10 day notice to end tenancy. The landlord's agent testified that the notice was served by way of posting on the tenants' door. A copy of the notice was submitted in evidence. However, the tenants had already effectively moved out of the unit in December 2011, and after service of the notice the tenants made no further payment toward rent. A move-out condition inspection was completed by the landlord without the participation of the tenants on April 17, 2012.

The landlord's agent testified to her understanding which is that the owners intend to sell the unit, and the family member assisting the tenants confirmed her understanding which is that the unit was placed on the market for sale on May 1, 2012.

## Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Section 45 of the Act speaks to **Tenant's notice**, and provides in part:

45(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.

Section 7 of the Act addresses **Liability for not complying with this Act or a tenancy agreement**, and provides as follows:

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.

Further, Residential Tenancy Policy Guideline # 3 speaks to "Claims for Rent and Damages for Loss of Rent," and provides in part:

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.

Based on the documentary evidence and testimony, I find that notice given by the tenants to end the tenancy does not comply with the above statutory provisions. However, I also find that there is no evidence of the landlord's having undertaken to mitigate the loss by advertising for new renters; rather, I find on a balance of probabilities that the unit was advertised for sale subsequent to the issuance of the 10 day notice (April 3, 2012) and before the end of the fixed term (May 31, 2012).

In the result, I find that the landlord has established entitlement to compensation in the limited amount of \$1,250.00, which is comprised of unpaid rent for April 2012 of \$1,200.00, in addition to the \$50.00 filing fee. I order that the landlord retain the security deposit of \$600.00, and I grant the landlord a monetary order for the balance owed of \$650.00 (\$1,250.00 - \$600.00).

### Conclusion

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of \$650.00. Should it be necessary, this order may be served on the tenants, filed in the 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: June 20, 2012.

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Residential Tenancy Branch