



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

This hearing dealt with an Application filed by the Landlord for a monetary order for losses arising from the Tenant breaking a fixed term lease early, to keep all or a portion of the security deposit and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure, however, I refer to only the relevant facts and issues in this decision.

### Issues(s) to be Decided

Did the Tenant breach the fixed term lease, entitling the Landlord to monetary compensation?

### Background and Evidence

This tenancy began on March 1, 2012, with the parties entering into a fixed term, written tenancy agreement. The agreement had an initial fixed term of six months and was to end on August 31, 2012, then continue as a month to month tenancy. The monthly rent was \$980.00, payable on the first day of the month and the Tenant paid a security deposit of \$490.00 on or about January 12, 2012.

The Tenant gave the Landlord notice he was ending the tenancy and vacated the rental unit on May 31, 2012.

The Agent for the Landlord testified that the subject rental unit had been leased by a different renter and that a new tenancy started on June 21, 2012.

The Landlord is claiming \$676.60 in rent loss from June 1 to June 21, 2012, due to the Tenant ending the fixed term tenancy early.

At the end of the tenancy the Landlord and the Tenant signed a document in which the Tenant agreed to pay a "lease breaking fee" of \$250.00 and \$100.00 for the carpet cleaning. The Landlord is claiming these amounts as well.

In reply the Tenant testified he found the Landlord another renter for the Landlord, although the Tenant acknowledged that this renter leased a different rental unit from the Landlord, not the subject rental unit.

The Tenant also argued that the Landlord should not be able to claim against the whole security deposit, when all he agreed to pay the Landlord was \$250.00 for the "lease breaking fee" and \$100.00 for carpet cleaning.

The Tenant also argued the Landlord should pay double the security deposit, since the Landlord did not file this Application within 15 days of May 31, 2012, when he vacated the rental unit.

### Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Tenant breached the fixed term tenancy agreement and the Act, without authority to do so.

A tenancy agreement is a binding legal contract which both parties must abide by, unless the agreement or portions of it are contrary to the Act.

In British Columbia a tenancy may only end if done so in accordance with the Act. Under section 45(3) of the Act the Tenant could not end the tenancy earlier than the fixed term date of August 31, 2012, unless there was some authority under the Act for him to do so. For example, if the Tenant felt the Landlord was in breach of a material term of the tenancy agreement, he could have written to the Landlord with a request to correct the breach and provide a reasonable time to do so. If the Landlord did not correct the problem within that time, then the Tenant might have ended the tenancy by giving notice earlier than the end of the fixed term.

Here the Tenant had no such authority under the Act to end the tenancy. He wanted to end the tenancy because he had purchased a condominium. Although he found the

Landlord another renter, this renter did not lease the subject rental unit. In other words, the Tenant did not find someone to take over the subject rental unit as in a sub-let situation or to assign the tenancy agreement to. Therefore, the Tenant has breached the Act and tenancy agreement.

Section 67 of the Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find the Landlord suffered a loss of rent for June 1 to 21, 2012, in the amount of \$676.70, due to the Tenant's breaches. I also find that the Tenant agreed to pay the Landlord the sum of \$100.00 for carpet cleaning.

As to the "lease breaking fee", while the Landlord provided several pages of the tenancy agreement, the page containing the clause explaining this fee was not included. The Landlord provided one page where the fee is simply listed, but there is nothing to explain this amount or what it is for.

Having reviewed the circumstances here, I find that the "lease breaking fee" was intended to be a liquidated damages clause. Under policy guideline 4 to the Act, a liquidated damages clause must be reviewed by a Dispute Resolution Officer to ensure it is not a penalty. In this instance, the Landlord has not provided a copy of the clause in evidence. Therefore, I dismiss this portion of the Landlord's claim without leave.

In regard to the Tenant's claim the security deposit should be doubled, I find that this tenancy did not end until June 21, 2012, as the Landlord had a new renter move into the rental unit then. In other words, the Tenant was still responsible under the tenancy agreement until June 21, 2012. As the Landlord made this Application on June 20, 2012, the Landlord did apply within the 15 days as required under the Act and therefore, the security deposit is not doubled.

Based on the above, I find that the Landlord has established a total monetary claim of **\$826.70**, comprised of \$676.70 in rent loss for a portion of June 2012, \$100.00 for carpet cleaning and the \$50.00 fee paid for this application.

Under section 72 of the Act, I order that the Landlord retain the deposit of \$490.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$336.70**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The Tenant breached a fixed term tenancy agreement without authority to do so under the Act, and the Landlord is entitled to loss of rent due to the breach. The Tenant agreed the Landlord could retain funds for carpet cleaning. The “lease breaking fee” is denied. After the offset of the security deposit, the Tenant owes the Landlord a balance of \$336.70.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 21, 2012.

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Residential Tenancy Branch