



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPB, MNR

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for unpaid rent and an order of possession due to an alleged breach by the tenant of an agreement with the landlord.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process. There were two tenants listed on the tenancy agreement; however the landlord filed her application for dispute resolution listing only the male tenant.

The evidence was discussed and the tenant acknowledged receiving the landlord's evidence. The tenants filed no written evidence.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, 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 evidence regarding the facts and issues in this decision.

*Preliminary Matter*-The landlord marked on her application for dispute resolution that she was seeking an order of possession for the rental unit; however it was clear from the application that she did not require such order, as the tenants allegedly never moved into the rental unit. I have therefore excluded her request for an order of possession for the rental unit.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order?

### Background and Evidence

The tenancy agreement signed by the parties and entered into evidence by the landlord indicated that this tenancy was to start on February 1, 2013, for a one year, fixed term, ending on February 1, 2014, that rent payable under the tenancy agreement was \$1600.00 per month and the tenants were to pay a security deposit and pet damage deposit of \$800.00 each on January 1, 2013.

The landlord's monetary claim is \$1600.00 for loss of rent revenue for February 2013.

The landlord's additional relevant evidence included copies of email and text message exchanges between the parties.

The landlord stated that after the parties entered into the tenancy agreement, signed by the tenants on January 3, 2013, she received an inquiry from the tenant, asking why another unit in the same building was renting for \$400.00 per month less than the rental unit in this case.

The landlord said she provided an explanation that the rental unit was larger and had more fees attached, and directed my attention to her evidence.

After agreeing to lower the amount requested for the pet damage deposit, the landlord said she ultimately received a text message from the tenant stating they would not be moving in. The text message also indicated that the lower monthly rent of the other rental unit made a significant impact on their decision not to move into the rental unit.

The landlord submitted that she placed the rental unit back on the market immediately, using online resources, listing the same amount of rent for a week, and then lowered the rent to \$1590.00. The landlord submitted that to date the rental unit has not been rented and that she suffered a loss of revenue for February 2013.

The tenants said that the plan to relocate to the rental unit was tentative, depending on the new job the tenant was to start; however, the employment did not start as planned and therefore they could not afford the monthly rent.

The tenant said there was a significant amount of communication between the landlord and the female tenant and that they informed her immediately upon learning that the male tenant's new job was not starting on the date planned.

The tenant also said that there was a “discrepancy” due to the lower priced rental unit in the same building.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to mitigate their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

I find the landlord and the tenants entered into a valid, enforceable fixed term tenancy contract and that the tenants were responsible for paying rent, beginning February 1, 2013, according to the terms of the agreement, whether they moved in or not.

Section 45(2) of the Act states that 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, the tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month that is not earlier than the fixed term.

In the case before me, as the tenants submitted notice on January 14, 2013, that they were not moving in on February 1, 2013, I find that the tenant submitted insufficient

notice to end the tenancy and is liable to the landlord for rent for the month of February 2013 under the terms of the tenancy agreement.

I am also satisfied that the landlord took reasonable steps to minimize her loss by marketing the rental unit for re-rent in a timely manner.

I therefore find that the landlord is entitled to a monetary award of \$1600.00, for loss of rent revenue for February 2013.

I therefore grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act in the amount of \$1600.00, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. Costs of enforcement may be recoverable from the tenant.

#### Conclusion

The landlord is granted a monetary order in the amount of \$1600.00.

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* and is being mailed to both the applicant and the respondent.

Dated: February 07, 2013

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Residential Tenancy Branch

