



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, FF

### Introduction

This hearing dealt with an application by the Landlord for an order for monetary damages arising from the Tenants breaking a fixed term lease early and to recover the filing fee for the Application.

Only the Agents for the Landlord appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Agents testified they served the Tenants with the Notice of Hearing and the Application by registered mail, sent on November 15, 2012. Under the Act, documents sent by registered mail are deemed served in five days. In evidence the Agents have provided registered mail receipts indicating the mail was sent to each of the Tenants. The Agents have also included tracking information from Canada Post indicating the mail was received by the Tenants on November 16, 2012. I find the Tenants have been duly served in accordance with the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Agents for the Landlord included registered mail receipts for the evidence they sent to the Tenants and the Branch, which was relied upon at the hearing. Tracking information from Canada Post, supplied by the Agents, indicates the Tenants received the evidence on January 28, 2013. I find the Tenants have been duly served with the evidence of the Landlord.

### Issues(s) to be Decided

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

### Background and Evidence

On August 24, 2012, the Tenants signed a tenancy agreement for a fixed term, to run from August 28, 2012, to January 5, 2013. The parties agreed that at the end of the fixed term the Tenants would vacate the rental unit.

The monthly rent was agreed upon at \$9,500.00 per month, payable on the first day of the month, for this furnished property. The Tenants paid the Landlord a security deposit of \$4,750.00 and a pet damage deposit of \$4,750.00 on or about August 24, 2012. I note that at the end of the tenancy the Landlord returned both deposits to the Tenants, less an agreed upon amount for cleaning.

On or about September 28, 2012, the Tenants gave the Landlord written notice they were vacating the rental unit on October 3, 2012. The Tenants signed an early termination document which informed them that the rent was payable up to January 5, 2013, unless the Landlord could re-rent the suite before then. In this agreement the Tenants acknowledge they are responsible for the loss to the Landlord if the rental unit is not re-rented before January 5, 2013.

The Agents for the Landlord testified that they tried to find new renters for the rental unit starting immediately after they received the notice of termination from the Tenants. The Agents testified that they posted the suite for rent at their own Internet website, and posted to another popular website every 48 hours, and had placed an ad on one other website.

The Agents testified that they tried to broaden the scope of potential renters by offering the rental unit furnished or unfurnished, and they did not alter the ability of renters to have pets in the rental unit.

In evidence the Landlord has supplied a copy of the tenancy agreement, early termination agreement, a receipt for the amounts due, condition inspection reports, addendums, registered mail receipts and tracking information from Canada Post.

### Analysis

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

The tenancy agreement is a binding, legal contract which both parties must abide by. Likewise, the early termination agreement signed by the Tenants is a binding, legal contract, which required the Tenants to pay the Landlord for any losses arising from their breach of the tenancy agreement.

In British Columbia a tenancy may only end if done so in accordance with the Act.

Under section 45(3) of the Act the Tenants could not end the tenancy earlier than the fixed term date of January 5, 2013, unless there was some authority under the Act for them to do so. For example, if the Tenants had an order from an Arbitrator allowing them to end the tenancy or some other authority under the Act. In this situation I find the Tenants had no authority under the Act to end the tenancy.

Therefore, as the Tenants breached the tenancy agreement and the Act by ending the tenancy without authority to do so, I find the Landlord is entitled to compensation for loss of rent.

I find the Landlord mitigated the loss, as required by the Act, and advertised the rental unit as soon as practical following the notice from the Tenants. The Landlord even broadened the potential market for renters by offering the rental unit unfurnished.

Section 67 of the Residential Tenancy 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 breach of the Act and the tenancy agreement by the Tenants has caused the Landlord to suffer a loss.

I find that the Landlord has established a total monetary claim of **\$20,632.25**, comprised of \$20,532.25 in rents for November 1, 2012, to January 5, 2013, and the \$100.00 fee paid by the Landlord for this application.

Conclusion

The Tenants breached a fixed term tenancy agreement without authority to do so under the Act or tenancy agreement. The Tenants are required to compensate the Landlord for the losses arising from their breach. The Landlord is granted a monetary order for \$20,632.25

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: February 14, 2013

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Residential Tenancy Branch

