



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

Landlords: MNR, MNDC and FF  
Tenant: MNDC, OLC and FF

### Introduction

This decision addresses applications by both the landlord and the tenant.

The landlord's application of January 11, 2013 sought a Monetary Order for unpaid rent for a second month during which the rental unit was vacant after the tenant left the fixed term rental agreement early.

The tenant's application seeks a Monetary Order for return of the first month's rent during which the rental unit was vacant after she left the fixed term agreement early. The tenant also seeks return of half of the liquidated damages charged and an order for the landlord to comply with the legislation and/or rental agreement.

### Issue(s) to be Decided

The landlord's application requires a decision on whether she is entitled to a monetary award for unpaid rent and recovery of the filing fee for this proceeding.

The tenant's application requires a decision on whether she is entitled to return half of the liquidated damages and one month's rent and recovery of her filing fee, and whether an order for landlord compliance with the legislation is appropriate..

### Background and Evidence

This tenancy began on September 15, 2011 under a fixed term rental agreement, originally set to end on August 31, 2012, renewed on August 14, 2012 for a fixed term to end on August 31, 2013. Rent was \$765 per month due on the first day of the month and the landlord held a security deposit of \$382.50 which was returned to the tenant.

During the hearing, the parties concurred that the tenant first gave verbal notice on October 28, 2012 that she would be leaving the tenancy on November 30, 2012, followed by written notice on October 31, 2012 at the landlord's request.

The tenant vacated as per the notice and paid the rent by direct deposit for December 2012 which she now seeks returned, and for January 2013, which the landlord returned pending the outcome of the present hearing.

On receiving the notice, the landlord advised the tenant that she had planned a vacation from November 3<sup>rd</sup> to 17<sup>th</sup>, but would actively market the rental unit on her return and would do everything she could to find a new tenant for December 1, 2012 to minimize the loss of rent. The rental building is a four-plex and the landlord did not have an alternate to do the work while she was away.

The tenant stated that she believed the landlord could have begun the advertising immediately and stated that she had referred a friend who was interested in the apartment. The landlord stated that she had met with him and found him to be a promising candidate, but his credit reference had been very poor and she had declined the tenancy.

The landlord stated that she had advertised on three web sites constantly from November 19, 2012, except for four days toward the end of November when she had a verbal commitment from excellent prospective tenants who withdrew before signing. Copies of the advertisements and the schedule were submitted into evidence.

The landlord noted that it is extremely difficult during the holiday season to find new tenants and the market was in a general down cycle at the time. She stated that, at times during the advertising period, there were up to 350 similar rental units advertised.

She stated that she had rewritten the ads a number of times to bring it to the top of the listings, had paid a premium at times to retain a top position, and had used seven photographs.

The landlord stated that she had shown the property 24 times, twice after she had a verbal commitment on December 18, 2012 from the tenants who did move in on February 1, 2013, in case they changed their mind before signed a few days later.

The tenant stated that she had mentioned the vacancy to a few friends and associates in an unsuccessful effort to assist the landlord in finding new tenants sooner.

### Analysis

Section 45 of the *Act* provides that a tenant may not give notice to end a fixed-term tenancy for an effective date that is earlier than the end of tenancy date set by the rental agreement, August 31, 2013 in this case.

Therefore, I must find that the tenant's notice of October 31, 2012 for November 30, 2012 is in breach of the rental agreement and the *Act*.

Section 7 of the *Act* provides that if one party to a rental agreement suffers a loss due to the other's breach of the rental agreement or legislation, then the party in breach must compensate the other for that loss. Section 7 of the *Act* requires the claimant to do whatever is reasonable to minimize the loss.

I find that it was not unreasonable for the landlord to proceed with her short vacation, planned since summer, in order to react to the tenant's unanticipated notice. I further find that the landlord acted reasonably in beginning a very active marketing effort on her return and in declining the first candidate due to a poor credit rating.

Given the highly unlikely possibility that the landlord would be able to sign a new tenant for January 1, 2013 in the week between Christmas and New Years, I find that the landlord acted prudently in committing to the new tenants who signed an agreement on or about December 21, 2012 for a tenancy to begin on February 1, 2013.

Therefore, I find that the respondent/applicant tenant is responsible for the rent for December 2012 and January 2013. As the landlord's application has succeeded on its merits, I find that she is entitled to recover the filing fee for this proceeding from the tenant.

In consequence, the tenant's request for return of the December 2012 rent is dismissed and I find the landlord is entitled to a Monetary Order for the rent for January 2013.

As to the tenant's request for return of half of the \$400 liquidated damages, I find that it is a term of the rental agreement based on a genuine pre estimate of the administrative costs of finding new tenants in the event of a breach of the agreement by the tenant and it does not preclude a claim for unpaid rent or loss of rent. It also serves the tenant as it sets an upper limit on the amount a landlord may claim for the administrative costs.

While the tenant expressed dissatisfaction with the landlord's efforts to find new tenants and the outcome of those efforts, having found the landlord took reasonable steps to minimize the loss, I find no justification to order the return of a portion of the liquidated damages. Therefore, this part of the tenant's application is dismissed.

Similarly, I find that the landlord has complied fully with the requirements of the *Act*, and dismiss the tenant's request for an order for landlord compliance.

### Conclusion

The landlords' copy of this decision is accompanied by a Monetary Order for \$815.00, comprised of \$765 rent for January 2013 and the \$50 filing fee. The order is for service on the tenant and it is enforceable through the Provincial Court of British Columbia.

The tenant's application is dismissed in its entirety without leave to reapply.

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 03, 2013

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Residential Tenancy Branch

