



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

Landlord: MNR, MNDC, MNSD and FF  
Tenant: MNDC, MNSD and FF

### Introduction

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

The landlords' application of January 17, 2013 sought a monetary award for unpaid rent/loss of rent, recovery of her filing fee and authorization to retain the tenant's security deposit in set off after the tenant did not move in the rental unit after signing a fixed term agreement to do so,.

The tenant's application of application of March 6, 2013 sought an order for return of her security deposit in double and recovery of the filing fee for this proceeding.

### Issue(s) to be Decided

The landlord's application requires a decision on whether she is entitled to a monetary award for claims submitted and authorization to retain the security deposit in set off.

The tenant's application requires a decision on whether she is entitled to return of the security deposit and whether the amount should be doubled.

### Background, Evidence and Analysis

On November 23, 2012, the parties signed a fixed term rental agreement for a tenancy that was to begin on January 1, 2013 and run to December 31, 2013.

Rent was to be \$1,250 per month and the tenant paid a security deposit of \$625 on November 23, 2012.

By telephone call of December 22, 2012, the tenant advised the landlord that a change of circumstances had caused her to reconsider proceeding with the tenancy. The parties disagree as to date, but the tenant provided written notice on December 22 or 27, 2012.

The landlord was able to sign a new rental agreement on January 3, 2013 with tenants to move in on February 1, 2013. The landlord stated that those tenants were also considering another rental unit, so she lowered the rent by \$25 per month to secure the tenancy, but is not making claim for the rent differential.

The applicant tenant, who lives nearby the rental unit, said she believed the landlord had told her the new tenants would be moving in on January 15, 2013 and submitted photographs showing a vehicle present. The landlord stated that the vehicle in the pictures belonged to her husband.

She stated that as male tenant would be out of town for work at the end of January 2013 and his wife was expecting, she permitted them to move some of their belongings into the rental unit early but was paid no rent for any part of January 2013. The rental agreement with the new tenants submitted into evidence indicates no rent was paid for January 2013, as does a letter from the new tenant submitted into evidence.

The landlord noted that she had similarly permitted the applicant tenant to begin moving her belongings into the rental unit starting on December 12, 2012 even though the tenancy and rent payments were not to begin until January 1, 2013.

## Analysis

A fixed term rental agreement is a binding contract which is breached by either party gives rise to a cause of action under section 7 of the *Act* if the other party suffers a loss due to the breach.

Section 45(2) of the *Act* provides that a tenant's notice to end tenancy under a fixed term rental agreement may not have an end of tenancy date earlier than the end date set by the rental agreement, December 31, 2013 in the present matter.

Therefore, I find that the tenant is responsible for the landlord's rent/loss of rent of \$1,250 for January 2013 and must compensate the landlord for the loss.

As the notice to end tenancy could not take effect until the start of the new tenancy, I find that the landlord made application prior to the expiry of the 15 days permitted under section 38 of the *Act*, and I hereby order that the landlord retain the security deposit in set off against the balance owed.

As the landlord's application has succeeded on its merits, I find that she is entitled to recover her filing fee for this proceeding from the tenant.

As the landlord's claim to retain the security deposit has succeeded on its merits, I must dismiss the tenant's claim for its return in double without leave to reapply.

Thus, I find that accounts balance as follows:

Rent/loss of rent owed to landlord for January 2013	\$1,250.00
Filing fee	<u>50.00</u>
Sub total	\$1,300.00
Less retained security deposit	<u>- 625.00</u>
<b>Balance due to landlord by Monetary Order</b>	<b>\$ 675.00</b>

### Conclusion

The tenants' application is dismissed on its merits without leave to reapply.

The landlord promises to immediately return the tenant's post dated cheques which she had retained as evidence pending the present hearing.

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order enforceable through the Provincial Court of British Columbia for **\$675.00** for service on the tenant.

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 09, 2013

---

Residential Tenancy Branch