



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC

### Introduction

This hearing dealt with the landlord's application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, an Order of Possession for breach of a material term of the tenancy agreement pursuant to section 55 and other unspecified remedies.

The tenant did not attend this hearing, although I waited until 2:50 p.m. in order to enable her to connect with this teleconference hearing scheduled for 2:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

At the commencement of this hearing, the landlord's spouse (the landlord) testified that she and her husband received the tenant's December 28, 2012 letter advising them of her intention to end this tenancy by mid-January 2013 on December 30, 2012. She testified that the tenant returned her keys and yielded vacant possession of the rental unit by January 31, 2013, and the landlord no longer requires an Order of Possession. The landlord's application for an Order of Possession is withdrawn.

### Preliminary Issues

On March 27, 2013, the Residential Tenancy Branch (the RTB) received a March 20, 2013 letter from the tenant in which she noted that she would be in Japan on the date of the hearing and would not be returning until April 20, 2013. She requested a "postponement" of the hearing to enable her to participate. I proceeded to hear the landlord's application because the tenant could have assigned an agent to look after her interests in this hearing and the tenant indicated in her March 20, 2013 letter that she was prepared to have a decision issued on the basis of the written evidence that she submitted with her March 27<sup>th</sup> letter.

The landlord testified that she sent a copy of the landlord's dispute resolution hearing package to the tenant by registered mail to all of the multiple addresses she had for the

tenant. These addresses included a post office box in Alaska which the tenant had provided to the landlord on January 29, 2013 as the address where the landlord could communicate with her. In addition, to the Alaskan address, the landlord's application for dispute resolution also referred to addresses in Utah, Penticton and Kelowna, as possible addresses for the tenant. At the hearing, the landlord testified that she sent copies of the dispute resolution hearing package to each of the addresses that the landlord had for the tenant. The landlord did not have details regarding the date when the dispute resolution hearing packages were sent, nor did the landlord have Canada Post Tracking Numbers to confirm these mailings.

When I referred to the tenant's March 20, 2013 request for an adjournment of this hearing to enable her to participate, the landlord said that she had not received a copy of this request or any written evidence from the tenant. However, the landlord also noted that she had erred in identifying both the landlord's street address and in identifying the landlord's postal code as the postal code for the dispute address rather than his correct out of province postal code. Although the landlord said that the tenant clearly knew the landlord's correct mailing address and postal code, I advised her that the tenant was required to provide her written evidence in response to the landlord's application for dispute resolution to the mailing address identified in the landlord's application. Since the landlord made two significant errors in the mailing address where the landlord could be served documents, I advised the landlord that I found that the tenant is not responsible for the landlord's failure to receive her written evidence. As such, I advised the landlord that I accepted that the tenant's written evidence was properly before me and could be considered in my rendering of a decision.

Despite the landlord's lack of information regarding the service of the dispute resolution hearing package to the tenant, the landlord correctly observed that the tenant must have received one of these packages if the tenant was able to send a letter to the RTB identifying this application on March 20, 2013. While the landlord was not able to properly demonstrate service of the dispute resolution hearing package to the tenant by way of the landlord's own sworn testimony, I accept that the tenant's March 20, 2013 letter demonstrates that the landlord did in fact serve the hearing package to the tenant.

#### Issues(s) to be Decided

Is the landlord entitled to a monetary award for losses arising out of this tenancy?

#### Background and Evidence

This one year fixed term tenancy commenced on September 1, 2012. Monthly rent was set at \$1,500.00, payable in advance by the first of each month, plus utilities. The tenant paid a \$750.00 security deposit and a \$750.00 pet damage deposit on

September 1, 2012. In her January 29, 2013 letter to the landlord, the tenant gave the landlord written authorization to the landlord to retain her pet damage and security deposit in lieu of her February 2013 rent.

The landlord's application for a monetary award of \$10,500.00 included a request for seven months of lost rent for the remainder of the tenant's fixed term tenancy agreement covering the period from February 2013 until August 2013.

At the hearing, the landlord testified that she and her husband have been successful in locating a new tenant who took possession of the rental unit on April 1, 2013. However, she said that this new tenancy signed on March 7, 2013 is for a reduced monthly rental amount of \$1,350.00. As such, she requested a reduced monetary award of \$2,250.00. The landlord has retained the tenant's pet damage and security deposits to compensate for loss of rent for February 2013. The landlord's reduced claim includes \$1,500.00 for March 2013, and \$150.00 for each of the five months from April 2013 until August 2013.

#### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. I find that the tenant was in breach of her fixed term tenancy agreement because she vacated the rental premises prior to the August 31, 2013 date specified in that agreement. Although the tenant claimed that she had to move because of concerns about the security in this building, I do not find that she had sufficient grounds to end her tenancy early on that basis. As such, the landlord is entitled to compensation for losses he incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*.

I accept that the landlord has retained the tenant's pet damage and security deposits in accordance with section 38 of the *Act*, as the tenant has authorized the landlord to keep these deposits to offset the loss of rent for February 2013.

There is undisputed evidence that the tenant did not pay any rent for the period from March 2013 until August 2013, the last six months of her fixed term tenancy. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

In the tenant's written evidence, the tenant questioned the landlord's efforts to mitigate the tenant's losses. Although the landlord advised the tenant that the landlord had placed multiple online rental listings for these premises, the tenant could locate a listing on only one rental website, Castanet. The tenant provided a copy of the January 15, 2013 on-line listing on that website. The tenant maintained that the landlord had raised the monthly rent requested from the \$1,500.00 that the tenant was paying to \$1,600.00 in that listing. The tenant also noted that the landlord had placed conditions on the prospective rental that would reduce the number of potential applicants for this rental space. These conditions included a "new prohibition against pets of any size and type" and a requirement that the only candidates that would be considered would be employed mature candidates. The tenant maintained that she had kept an active watch on six popular rental websites and could only locate the original Castanet listing and a renewed listing on that same rental website a few weeks later.

The landlord did not dispute the tenant's claim that the landlord initially requested an increased monthly rent for these premises. However, she said that a week or two after the initial listing, she revised the asking rent to the \$1,500.00 paid by the tenant. She did not dispute the tenant's claim regarding the changed conditions that the landlord was seeking for a new tenancy. She testified that she placed advertisements on Castanet as well as three other popular rental websites, and posted an advertisement in the rental building. She did not provide details as to the content of these advertisements, the dates when they were posted, or when the asking rent was reduced.

The landlord's only written evidence was in the Details of the Dispute in the application for dispute resolution. This evidence did not address any of the efforts made by the landlord to mitigate the tenant's losses. At the hearing, the landlord commented that she believed that such details would not be necessary and that it was the role of the RTB to help her with her claim. I noted that my role as an arbitrator is to provide an independent decision with respect to the evidence before me.

Given that this was the landlord's application for a sizeable monetary award, I find the landlord's reliance on sworn oral testimony absent of many important details unacceptable. I find that the landlord has provided inadequate evidence to demonstrate

that a genuine attempt has been made to mitigate all of the tenant's losses resulting from the tenant's failure to adhere to the terms of her fixed term tenancy. I find that the landlord's initial attempt to increase the monthly rent from these premises and the tenant's undisputed evidence regarding the changed requested conditions of the tenancy had the effect of limiting the potential applicants who would be interested in renting these rental premises. The landlord's failure to provide written evidence to demonstrate the efforts taken to mitigate the tenant's losses is also of concern as is the lack of details in the landlord's sworn oral testimony.

For the above reasons, I am not satisfied that the landlord has fully discharged his duty under section 7(2) of the *Act* to minimize the tenants' loss. As I am not satisfied that the landlord submitted sufficient information regarding the efforts to re-rent the premises, I find that the landlord has not demonstrated to the extent necessary that proper measures were taken to mitigate the tenant's losses for March 2013. I dismiss the landlord's application for a monetary award for the period pre-dating April 1, 2013, without leave to reapply.

Despite the above-noted deficiencies in the landlord's application, I recognize that some efforts were clearly made by the landlord to re-rent the premises, as evidenced by the landlord's success in locating a new tenant for April 2013. Although the landlord could have provided written evidence to demonstrate the successful rental of the premises to a new tenant on March 7, 2013 to take occupancy on April 1, 2013, I do accept the landlord's undisputed sworn testimony that the landlord has had to accept a lower monthly rent from April 2013 until the end of the tenant's fixed term tenancy. I also find that a portion of the \$150.00 reduction in the monthly rent that the landlord accepted may result from the additional conditions that the landlord was seeking for this tenancy and hence a reduction in the number of potential renters who might qualify for this tenancy. Consequently, I find that the landlord is entitled to a monetary award of \$100.00 for each of the five months from April 2013 until August 2013.

### Conclusion

I issue a monetary Order in the landlord's favour in the amount of \$500.00, which enables the landlord to recover losses arising out of this tenancy. The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlord's application for an Order of Possession is withdrawn.

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 08, 2013

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Residential Tenancy Branch