



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNR, MNDC, MNSD, FF

### **Introduction:**

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss; to retain all or part of the security deposit; and to recover the fee for filing an Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord initially stated that she served the Tenant with the Application for Dispute Resolution, by registered mail, sometime near the beginning in April. When she was advised that the Application for Dispute Resolution was not filed until April 16, 2013, she stated that she believes the Application was mailed to the Tenant sometime in April.

The Landlord submitted a copy of a tenancy agreement to the Residential Tenancy Branch, a copy of which has never been provided to the Tenant. As the agreement was not served to the Tenant was not accepted as evidence for these proceedings.

The Tenant submitted one document to the Residential Tenancy Branch, copy of which was served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

### **Issue(s) to be Decided:**

Is the Landlord entitled to a monetary Order for unpaid rent/lost revenue and to keep all or part of the security deposit?

### **Background and Evidence:**

The Landlord and the Tenant agree that they entered into a written tenancy agreement, a copy of which is not available to me; that the tenancy was to begin on April 15, 2013; that the agreement required the Tenant to pay monthly rent of \$950.00; and that the Tenant paid a security deposit of \$475.00.

The Landlord stated that the rent was due by the fifteenth day of each month. The Tenant stated that pro-rated rent of \$475.00 was due on May 15, 2013, after which she was obligated to pay full rent by the first day of each month.

The Tenant stated that when they entered into this tenancy agreement the Landlord told her that she could have a cat and that on April 08, 2013 the Landlord told the Tenant she could not have a cat. She stated that she does not know if the agreement about the cat was recorded in the tenancy agreement.

The Landlord stated that when the Tenant signed the tenancy agreement the Tenant asked if she could have a cat; that she told her there were no pets allowed but she would discuss it with her husband; and that on April 01, 2013 she told the Tenant she could not have a cat.

The Tenant stated that on April 08, 2013 she verbally advised the Landlord that she would not be moving into the rental unit because she could not have a cat; that the Landlord did not indicate that she had a problem with that decision; and that the Landlord agreed to refund her security deposit.

The Landlord stated that on, or about, April 03, 2013 the Tenant verbally informed her that she would not be moving into the rental unit.

The Landlord and the Tenant agree that the Tenant did not move into the rental unit and that no rent was paid for April of 2013.

The Landlord is seeking compensation for unpaid rent for April and loss of revenue. She stated that the rental unit was advertised on a popular website and that it was rented to another person for May 01, 2013.

### Analysis

As this claim was filed by the Landlord, the Landlord bears the burden of proving the claim.

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$950.00.

I find that the Landlord has submitted insufficient evidence to show that rent was due by the 15<sup>th</sup> day of each month. In reaching this conclusion I was heavily influenced by the absence of documentary evidence, such as a copy of the tenancy agreement, that corroborates this testimony. In reaching this conclusion I was further influenced by the

nature of the Landlord's testimony, which was often halting and lacking in specifics. While I do not find that the Landlord was being deliberately misleading or evasive, I find that she does not have a clear recollection of some of the details of this matter and I am not inclined to accept her unsupported testimony regarding the date rent was due.

Conversely, the Tenant's testimony was forthright, consistent, and direct. I therefore favour the Tenant's testimony that rent of \$475.00 was due by April 15, 2013 and thereafter the full rent was due by the first day of each month.

Section 44(1)(a) of the *Residential Tenancy Act (Act)* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 45, 46, 47, 48, 49, 49.1, and 50 of the *Act*. The evidence shows that neither party gave written notice to end this tenancy in accordance with these sections and I therefore find that the tenancy did not end pursuant to section 44(1)(a) of the *Act*.

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. As there is no evidence that this was a fixed term tenancy, I find that the tenancy did not end pursuant to section 44(1)(b) of the *Act*.

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. As there is no evidence that the parties agreed in writing to end the tenancy, I find that the tenancy did not end pursuant to section 44(1)(c) of the *Act*.

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. I find that this tenancy ended when the Tenant abandoned the rental unit on April 15, 2013.

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. As there is no evidence that this tenancy agreement was frustrated, I find that the tenancy did not end pursuant to section 44(1)(e) of the *Act*.

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. As there is no evidence that the director ordered an end to this tenancy, I find that the tenancy did not end pursuant to section 44(1)(f) of the *Act*.

I find that the Tenant failed to comply with section 45 of the *Act* when she failed to provide the Landlord with written notice of her intent to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due. As the Tenant had not properly ended the tenancy prior to April 15, 2013, I find that she was obligated to pay all of the rent that was due on April 15, 2013, pursuant to section 26 of the *Act*. On this basis, I find that the Tenant is obligated to pay \$475.00 in rent that was due on April 15, 2013.

On the basis of the undisputed evidence, I find that the rental unit was rented to another person for May 01, 2013. I therefore cannot conclude that the Landlord lost revenue for the month of May and I dismiss the Landlord's claim for lost revenue.

In determining this matter I have placed no weight on the discussions about having a cat in the rental unit. Even if I were to determine that the Landlord agreed that the Tenant could have a cat, the Tenant was still obligated to end the tenancy in accordance with section 45(3) of the *Act* or she could have moved into the rental unit and disputed any attempt made by the Landlord to end the tenancy on the basis of the cat.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

### Conclusion

The Landlord has established a monetary claim, in the amount of \$525.00, which is comprised of \$475.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I authorize the Landlord to keep the security deposit of \$475.00 in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$50.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: June 11, 2013

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Residential Tenancy Branch