



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNDC, MNR, MND, 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 money owed or compensation for damage or loss; for a monetary Order for unpaid rent; for a monetary Order for damage; and to recover the fee for filing this Application for Dispute Resolution.

The Landlord and the female Tenant 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.

The Landlord stated that the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence were sent to both Tenants, via registered mail, at the address provided to him by a private investigation company. The Tenant stated that she and the male Tenant received these documents and that she is representing the male Tenant at these proceedings.

The Landlord was advised that his application for compensation for damages of \$750.00 was being refused, pursuant to section 59(5)(a) of the *Residential Tenancy Act* (Act), because his Application for Dispute Resolution did not provide sufficient particulars of his claim for compensation for damages, as is required by section 59(2)(b) of the Act. In reaching this conclusion, I was strongly influenced by the absence of a list of alleged damages that show how much compensation the Landlord is claiming for each damaged item. I find that proceeding with the Landlord's claim for damages at this hearing would be prejudicial to the Tenant, as the absence of particulars makes it difficult, if not impossible, for the Tenant to adequately prepare a response to the claims. The Landlord retains the right to file another Application for Dispute Resolution in which he claims compensation for damages to the rental unit.

### Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent/loss of revenue; to compensation for replacing two key fobs; and for the cost of hiring a private investigation company?

### Background and Evidence

The Landlord and the Tenant agree that they entered into a fixed term tenancy agreement that began on November 01, 2012 and was to continue until October 31, 2013, at which time it was to continue as a periodic tenancy, for which the Tenant was required to pay monthly rent of \$1,500.00. The parties agree that the Tenant did not pay rent for January of 2013; that the Landlord served the Tenant with a Ten Day Notice to End Tenancy that required the Tenant to vacate the rental unit by February 02, 2013; and that the Tenant did vacate the rental unit by February 02, 2013.

The Landlord stated that he posted the Notice to End Tenancy at the rental unit on January 23, 2013 and the Tenant stated that her brother found the Notice and provided it to her sometime in January of 2013.

The Landlord stated that he need to clean and paint the rental unit at the end of the tenancy; that he began advertising the rental unit on, or about, February 14, 2013; and that he found new tenants for the rental unit for March 01, 2013.

The Landlord is seeking compensation, in the amount of \$400.00, for the costs of locating the Tenant after the tenancy ended. The Landlord and the Tenant agree that the Tenant has not yet provided the Landlord with a forwarding address. The Tenant stated that the Landlord knew where she worked and he had a telephone number for her. The Landlord stated that he did not know the location of the Tenant's place of employment and that the Tenant would not answer her phone when he called.

The Landlord is seeking compensation, in the amount of \$150.00, for the cost of replacing two key fobs. The Tenant stated that she still has the fobs and she will mail them to the Landlord. The Landlord initially stated that he did not want them returned as he has deactivated them. The Tenant stated that the fobs are still functional and can simply be reactivated, at which point the Landlord asked that they be returned. The Landlord did not submit a receipt to show that he paid \$150.00 to have the fobs deactivated.

### Analysis

On the basis of the undisputed evidence, I find that the Tenant did not pay the \$1,500.00 in rent that was due for January of 2013. As the Tenant is obligated to pay rent when it is due, pursuant to section 26 of the Act, I find that the Tenant owes the Landlord \$1,500.00.

I find that the Tenant breached a material term of this fixed term tenancy agreement, which resulted in the Landlord ending the tenancy pursuant to section 46 of the *Act*. On the basis of the undisputed evidence, I find that the Landlord lost revenue for the month of February of 2013, as a result of the Tenant's failure to pay rent. As this was a fixed term tenancy that was ended prematurely as a result of the Tenant's actions, I find that the Landlord is entitled to compensation for lost revenue for the period February 01, 2013 and February 14, 2013, in the amount of \$750.00.

Section 7(2) of the *Act* requires a landlord who claims compensation for damage or loss to do whatever is reasonable to minimize the damage or loss. In these circumstances the Landlord did not advertise the rental unit until on, or about, February 14, 2013. I find that the Landlord may have found a new Tenant for February 15, 2013 if he had advertised the unit in a timelier manner. In determining this matter I have placed little weight on the Landlord's testimony that the unit needed to be cleaned and painted, as the need to paint and clean does not prevent the unit being advertised and shown to prospective tenants.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 67 of the *Act* authorizes me to order a tenant to pay money to a landlord when the landlord has suffered a loss as a result of the tenant failing to comply with the *Act* or the tenancy agreement. I am not aware of anything in the *Act* that requires a Tenant to provide a Landlord with a forwarding address at the end of the tenancy. As the Tenant is not obligated to provide a forwarding address, I am unable to award compensation for costs arising from the Tenant's failure to provide a forwarding address. I therefore dismiss the claim for \$400.00.

A tenant who does not provide the landlord with a forwarding address, however, may forfeit their right to the return of the security deposit, pursuant to section 39 of the *Act*. Section 39 of the *Act* stipulates that a landlord may retain the tenant's security deposit and/or pet damage deposit if the tenant does not provide the landlord with a forwarding address, in writing, within one year after the end of the tenancy.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant did not return the key fobs. In addition to establishing that a tenant failed to comply with the *Act*, a landlord must also accurately establish the cost of remedying the breach. In these circumstances, I find that the Landlord failed to establish the true cost of replacing or deactivating the key fobs. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence, such as a receipt, that corroborates the Landlord's statement that it cost

\$150.00 to replace the fobs. On this basis, I dismiss the Landlord's claim for compensation for the key fobs.

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

### Conclusion

The Landlord has established a monetary claim, in the amount of \$2,300.00, which is comprised of \$2,250.00 in unpaid rent/lost revenue and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution and I grant a monetary Order for that amount. 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 14, 2013

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Residential Tenancy Branch

