



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Shaunessy Management Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

MNR; MNSD; FF

### **Introduction**

This is the Landlord's application for a Monetary Order for unpaid rent; to retain the security deposit in partial satisfaction of its monetary award; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

The Landlord's agent ("KH") testified that she mailed the Notice of Hearing documents and copies of the Landlord's documentary evidence to each the Tenants, by registered mail to the forwarding address given on the Condition Inspection Report, on March 11, 2013. KH provided the tracking numbers for the registered documents.

The Tenant testified that he sent copies of his documentary evidence to the Landlord and to the Residential Tenancy Branch by registered mail on May 22, 2013. The Landlord acknowledged receipt of the Tenant's documents on May 24, 2013. I informed the Tenant that his documentary evidence was not on the case file, or in the Residential Tenancy Branch's electronic filing system. The Tenant did not provide the tracking number for the registered mail sent to the Residential Tenancy Branch. The Tenant read in his documentary evidence during the Hearing.

### **Preliminary Matter**

During the course of the Hearing, the Tenant stated that his sister, the Respondent VS, was not a tenant under the tenancy agreement. He stated that she was an occupant only and had no direct dealings with the Landlord over the course of the tenancy.

The Landlord provided a copy of the tenancy agreement, a dishonoured cheque and the Condition Inspection Report in evidence. The tenancy agreement names the Respondent VS on the first page; however, she did not sign the tenancy agreement. The dishonoured cheque is in the name of the Tenant SS, and bears his signature. The Condition Inspection Report was signed by the Tenant SS only. KH did not dispute that she had no direct dealings with the Respondent VS during the tenancy. Therefore, I

find that the Respondent VS was an occupant only. Occupants have no rights or obligations under a tenancy agreement, and therefore **any monetary order that may flow from the Decision will be against the Tenant SS only.**

### **Issues to be Decided**

- Is the Landlord entitled to a monetary order for loss of revenue for the month of March, 2013?
- May the Landlord apply the security deposit towards partial payment of its monetary award?

### **Background and Evidence**

This tenancy began on April 1, 2010. It was initially a term lease, ending March 31, 2011. At the end of the term lease, the tenancy continued on a month to month basis. Monthly rent was \$1,050.00, due on the first day of each month. There were no rent increases for the duration of the tenancy. The Tenant paid a security deposit in the amount of \$525.00 on February 28, 2010.

The Tenant and occupant moved out of the rental unit on February 27, 2013. A move out Condition Inspection Report was completed at the end of the tenancy, a copy of which was provided in evidence. The Tenant was present at the move out inspection and signed the section of the Report indicating that he agreed to the Landlord retaining the security deposit in partial payment of March's rent. The Tenant left the rental unit in a clean and undamaged state at the end of the tenancy.

### **KH gave the following testimony and submissions:**

On February 1, 2013, the Tenant's brother gave her a notice to end the tenancy. It was not signed and did not provide the Tenant's name. KH advised the Tenant that it was not a valid notice and asked the Tenant to provide a signed notice. She advised the Tenant that he would be responsible for March rent if the Landlord was unable to re-rent the rental unit for March 1, 2013.

On February 2, 2013, KH received another notice. This time it had the Tenant's and the occupant's name on the notice, but was still not signed.

The Landlord began advertising the rental unit right away, even though it did not have a valid notice to end the tenancy from the Tenant. KH placed an advertisement in two popular on-line sites, which she updated daily. The Landlord's head office also placed an advertisement in a popular on-line site.

The Landlord was not able to re-rent the rental unit until April 1, 2013, at a reduced rent of \$1,000.00 per month.

The Landlord seeks loss of revenue for March, 2013, in the amount of **\$1,050.00**.

The Tenant gave the following testimony and submissions:

The Tenant works out of town and was not able to provide the Landlord with a signed notice to end the tenancy because he didn't have access to a fax or scanner at the time he gave his notice. KH knew that the Tenant was out of town and accepted the notice, which meant that the parties had a mutual agreement to end the tenancy on February 28, 2013. It is unfair to hold the Tenant to the provisions of the Act in these circumstances.

The Tenant has hotel receipts which prove that he was not in town at the end of January and therefore could not have provided his signature on the notice.

The Landlord did not try hard enough to re-rent the rental unit. The advertisements said that there was new paint and a new kitchen in the rental unit, which is untrue. The Landlord initially asked for rent in the amount of \$1,150.00, which is more than the Tenant was paying.

**Analysis**

Section 45(1) of the Act requires a tenant to provide notice to end a tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement. In this case, the Tenant did not provide notice within the timeframes set out in Section 45(1) of the Act.

I do not accept the Tenant's submission that the parties had a mutual agreement to end the tenancy effective February 28, 2013. A mutual end of tenancy agreement must be in writing. Section 52 of the Act provides that a notice must be in writing and must be signed and dated by the party giving the notice. In this case, the Tenant did not provide the Landlord with a signed notice to end the tenancy. Based on the testimony of both parties, I find that the Tenant did not provide a valid notice to end the tenancy.

Section 7(2) of the Act requires the Landlord to take reasonable steps to minimize the loss or damage being claimed. In this case, I find that the Landlord took reasonable steps to re-rent the rental unit in order to mitigate its loss of revenue.

Therefore, I grant the Landlord's application for loss of revenue in the amount of **\$1,050.00** for the month of March, 2013.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of its monetary claim. No interest has accrued on the security deposit.

The Landlord has been successful in its application and I find that it is entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

I hereby provide the Landlord a Monetary Order, calculated as follows:

Loss of revenue	\$1,050.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$1,100.00
Less security deposit	<u>- \$525.00</u>
<b>TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF</b>	<b>\$575.00</b>

### **Conclusion**

I hereby provide the Landlord with a Monetary Order in the amount of **\$575.00** for service upon the Tenant SS. This Order must may be filed in the Provincial Court of British Columbia (Small Claims) 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 05, 2013

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Residential Tenancy Branch