



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for unpaid rent, for authority to retain the tenants' security deposit and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### *Preliminary issues-*

#1-The tenant appeared and requested an adjournment as she was in the hospital and had just delivered a baby the night before the hearing. In response to my question, the tenant also said that she had not provided evidence for the hearing as she was in the hospital and had been too busy otherwise.

In assessing whether an adjournment request should be granted the following criteria can be considered pursuant to Residential Tenancy Branch Rules of Procedure (Rules) 6.4:

- whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [objective and purpose];
- whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;

- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- the possible prejudice to each party.

I have denied the tenant's request for an adjournment of this hearing as I determined that the tenants' would not be unduly prejudiced by continuing with the hearing. I arrived at this conclusion as I would not allow any submission of evidence by the tenant at the next hearing and after determining that the tenant was fully aware of the proceedings at hand.

#2-In her application for dispute resolution, the landlord requested monetary compensation in the amount of \$550; however the landlord filed evidence the week prior to the hearing in which the landlord sought to increase her request for monetary compensation to \$1500.

In response to my question, the tenants agreed that they received the evidence and that they understood that the landlord was now seeking \$1500 instead of \$550 as listed in her application. I therefore have amended the landlord's application to include a monetary order in the amount of \$1500.

#### Issue(s) to be Decided

Is the landlord entitled to monetary compensation, to retain the tenants' security deposit and to recover the filing fee?

#### Background and Evidence

The undisputed evidence shows that this one year, fixed term tenancy started on September 1, 2012, that the monthly rent obligation was \$1100, and that the tenants paid a security deposit in the amount of \$550.

The parties differ on when the tenancy ended by the tenants vacating the rental unit. The landlord said the tenants moved out on or about February 28, 2013, and the tenants said they moved out earlier in the month to allow the landlord to find a new tenant.

In support of her application, the landlord's relevant evidence included the tenancy agreement, copies of pages from the Guide for Landlords and Tenants in British Columbia (guide book), the tenancy agreement relating to the subsequent tenant, handwritten Statement of Claim, and a written summary explaining the increased monetary claim.

As stated earlier, the landlord requests monetary compensation of \$1500, which she claims is for loss of rent revenue for March and half of April until the rental unit was re-rented.

In support of her application, the landlord submitted that the tenants gave insufficient notice that they were ending the tenancy as they were not allowed to end the tenancy earlier than the end of the fixed term listed on the tenancy agreement, or August 31, 2013, resulting in a loss of rent revenue.

The landlord contended that the onus was on the tenants to find another tenant to take over the balance of the fixed term and cited a section in the guide book as reference.

In response to my question the landlord said that she received the tenants' notice of their intent to vacate sometime in February 2013, and repeated several times during the hearing that she did not receive even a month's notice.

The landlord further contended that since the tenants were not making much progress in securing a tenant for the balance of the fixed term, she ultimately placed an advertisement on Craigslist. The landlord confirmed that the rental unit was advertised for a few days for \$50 more than the tenants' monthly rent, until it was changed.

The landlord said she secured a new tenant, for an effective start date of April 15, 2013, for a monthly rent of \$1000.

In response, the tenant contended that they gave the landlord notice in mid January that they were vacating the rental unit effective February 28, 2013. The tenant said that they received an email from the landlord in January instructing them as to the content of the advertisement the tenants were to place online.

The tenant said that in her communication with the landlord, she understood the landlord had no problem with them leaving, as they were forced to vacate due to lack of employment and as the tenants gave at least a month and a half notice.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, *the landlord in this case*, has to prove, with a balance of probabilities, four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

As to the landlord's claim that she is entitled to loss of rent revenue for March and the first half of April, Section 45(2) of the Act states that a tenant may end a fixed term tenancy by giving the landlord written notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In other words, the tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term.

I therefore accept that the tenants provided insufficient notice to end the tenancy early, by their failure to give notice in writing at least one clear month before the effective date of the notice to end.

However, the landlord, not the tenants, is required under section 7(2) of the Act to take reasonable measures to minimize her loss.

In the case before me, I do not accept the landlord's testimony that she did not receive notice from the tenants until sometime in February, as this testimony directly contradicts the landlord's written evidence submitted with her application for dispute resolution. In this handwritten statement, the landlord wrote that the tenants phoned in "middle of JAN/2013" requesting to terminate their fixed term tenancy agreement, and additionally the tenants informed her that they were only paying rent through February 28 and moving out.

Due to the direct contradictions provided by the landlord as noted above, I could not rely on the landlord's evidence and I accept that the tenants gave notice by mid January 2013 that they were vacating by June 28, 2013. I find that the landlord did not require a written notice that the tenancy was ending as the landlord acknowledged that she understood the tenants were vacating on or before February 28, 2013 and insisted that these tenants find new tenants.

I also find that the landlord submitted insufficient evidence that she began taking reasonable efforts to re-rent the rental unit or site at a reasonably economic rent. I reached this conclusion by the landlord's confirmation that she believed it was the tenants' responsibility to market the rental unit, that she did not begin efforts herself to re-rent the rental unit until sometime in March 2013, as shown by the one Craigslist advertisement she placed into evidence, and that initially she had the tenants list the rental unit for a rent higher than the tenants were paying.

As I have found that the landlord submitted insufficient evidence that she herself began without delay to re-rent the rental unit at a reasonably economic rate, I cannot conclude that the landlord has met the 4<sup>th</sup> step of her burden of proof.

I therefore dismiss the landlord's monetary claim for loss of rent revenue for March and the first part of April 2013 in the amount of \$1500, without leave to reapply.

I likewise dismiss the landlord's request for recovery of the filing fee as I have dismissed her application for monetary compensation.

As I have dismissed the landlord's application claiming against the tenants' security deposit, I order that the landlord return the tenants' security deposit to them, in accordance with Residential Tenancy Branch Policy Guideline #17.

Pursuant to this order, I therefore grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act in the amount of \$550, which I have enclosed with the tenants' Decision.

Should the landlord fail to pay the tenants this amount without delay after it is served upon her, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of enforcement may be recoverable from the landlord.

### Conclusion

The landlord's application is dismissed for the reasons set out above.

The landlord is ordered to return the tenants' security deposit and the tenants are granted a monetary order in the amount of their security deposit, \$550.

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