



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, MNSD, SS and FF

### Introduction

This hearing was convened on the landlord's application of July 9, 2013 seeking a monetary award for unpaid rent and loss of rent, late fee and recovery of the filing fee for this proceeding after the tenant vacated without giving proper notice. An Order of Possession in support of a Notice to End Tenancy for unpaid rent served on July 3, 2013 was no longer necessary as the tenant has moved.

The landlord served the tenant with the Notice of Hearing sent by registered mail on July 10, 2013 and provided evidence from the Canada Post web site that it was served on July 11, 2013 while the tenant was still in the rental unit. Therefore, as authorized by section 71(2)(c) of the Act, I find that the tenant has been sufficiently served. Therefore, authorization for substitute service is not required.

Despite having been served with the Notice of Hearing, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her absence.

### Issues to be Decided

Is the landlord entitled to monetary compensation for the claims submitted and in what amount?

### Background, Evidence and Analysis

This tenancy began on June 1, 2013. Rent was \$900 per month and the landlord holds a security deposit of \$450 paid on May 14, 2013.

During the hearing, the landlord gave evidence that the tenant had advised her by telephone on June 16, 2013 that she would be vacating the rental unit on July 15, 2013. The landlord explained to the tenant that, as the tenancy ran from the first day of the month, the notice could not take effect before July 31, 2013 in order to meet the time requirements of section 45(1) of the *Act*.

Moreover, the landlord advised the tenant that, in order for her to be legally free to offer the rental unit to new tenants, it was imperative that the tenant provide the notice in writing. The landlord repeated the request a number of times in the ensuing period, including in an email of June 20, 2013, but the tenant never did put the notice in writing.

On attending the rental unit on June 30, 2013 to collect the July 2013 rent, the landlord found the tenant dismissive and she said to use the security deposit for the purpose.

The landlord stated that she conducted a move-out condition inspection on July 14, 2013 and having then become confident that the tenant had moved, she advertised the rental unit on Craigslist and Kijiji immediately. She stated that she showed the rental unit to four parties on July 17, 2013, but none had given notice to their landlords and could not take the unit until September 1, 2013. Therefore, I find that the landlord has met the obligation of section 7(2) of the *Act* to act reasonably to minimize her loss.

Therefore, the landlord seeks a monetary award for the rent for July 2013 plus \$25 late fee as per the rental agreement, loss of rent for August 2013, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off.

### Analysis

Section 45 of the *Act* requires that a tenant's notice to end a tenancy must be served on a day before the rent due date of the month (rental period) and must give at least a full month's notice. Section 45 also states that the notice must comply with section 52 of the *Act* which makes it mandatory that the notice be in writing and contain specified elements.

Without such enforceable notice, a landlord may be put in a position in which the tenant has a change of mind after a landlord has contracted with new tenants. I find that the notice to end tenancy for unpaid rent does not nullify the landlord's claim for breach of the tenant's duty under section 45 of the *Act*.

Therefore, I find that the landlord has complied fully with the legislation under the circumstances and that she is entitled to a monetary award for the claims submitted and summarized as follows:

Unpaid rent for July 2013	\$ 900.00
Late fee for July 2013	25.00
Loss of rent for August 2013	900.00
Filing fee	50.00
Sub total	\$1,875.00
Less retained security deposits (No interest due)	- 450.00
<b>TOTAL remaining owed to landlord</b>	<b>\$1,425.00</b>

### Conclusion

In addition to authorization to retain the tenant's security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order for **\$1,425.00**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

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: August 12, 2013

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Residential Tenancy Branch

