



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR MNDC FF

### Preliminary Issues

The Tenants signed into this proceed late, after the Landlords agreed to the affirmation to tell the truth. I informed the Tenants about the testimony I had heard prior to them signing into the hearing. After explaining how the proceeding would work both Tenants indicated that they understood.

The male Tenant then asked if someone was present who could translate English to Chinese. I explained to the Tenants that the *Residential Tenancy Branch* does not provide translators and I noted that they seemed to be speaking English adequately. I advised the Tenants that if at any time during this proceeding they did not understand what was being said they could ask me to explain it to them. The Tenants never asked me to explain any of the testimony during the remainder of this proceeding and I had no problems understanding their testimony which they provided in English. I rephrased and repeated their testimony several times and they confirmed that I understood what they had said correctly.

### Introduction

This hearing dealt with an Application for Dispute Resolution on May 24, 2013, by the Landlords to obtain a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for unpaid rent; and to recover the cost of the filing fee from the Tenants for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Landlord be granted a Monetary Order?

Background and Evidence

The Landlords agents (hereinafter referred to as Landlords) submitted documentary evidence which included, among other things, copies of: the tenancy agreement; the addendum to end the fixed term tenancy; the May 22, 2013 letter issued to the Tenants by the Landlord; a six page document issued May 24, 2013 to the Landlord and signed by the Tenants.

The undisputed testimony confirmed that both parties signed a fixed term tenancy agreement that began on February 1, 2013 and was set to end on April 30, 2013 and on April 2, 2013 both parties signed an addendum to renew the lease for the period from May 1, 2013 to July 31, 2013, at which time the tenancy would end and the Tenants would be required to move out of the unit. Rent was payable on the first of each month in the amount of \$795.00 and on January 30, 2013, the Tenants paid \$397.50 as the security deposit.

The Landlords testified that on May 1, 2013, the Tenants informed them they were pregnant and due in June 2013. The Landlords informed the Tenants at that time that they could not reside in the rental unit past July 31, 2013 because it was an adult only building. They contacted the owner to see if the Tenants could move into another child friendly building and showed the Tenants an alternative two bedroom unit on May 13, 2013, however the Tenants did not like that unit. The Landlord said that on May 24, 2013, the Tenants served them a letter which indicated they were moving out at the end of the month. The Tenants vacated the unit May 31, 2013, even though the Landlords advised them they would be responsible for the rent payments if the unit could not be re-rented.

The Landlord stated that they advertised the unit on the internet and were not able to re-rent the unit until August 1, 2013. The unit is a one bedroom furnished unit which is a unique market that primarily is rented to students. They found a student who agreed to rent from August 1<sup>st</sup>, for the same price as the Tenants were paying, even though he is not starting school until September.

The Tenants claimed the Landlords were not telling the truth and argued that the Landlords told them they would have to move out as soon as the baby was born; so they decided to find a place sooner. They confirmed they looked at the alternative unit but they did not like it. They also confirmed they saw the Landlords' advertisement on the internet during the month of June and the first half of July but that they did not see an advertisement in August even though they checked every day. They do not believe it was unit # 4 advertised, rather it was unit # 108 as they only saw pictures of the unit.

The Tenants believe they should not have to pay the rent because they had to move because they were pregnant and needed time to prepare for the arrival of the baby. They also pointed out that the male Tenant's name was spelled incorrectly on one of the documents, which was corrected.

In closing the Landlord clarified that her advertisement was on the internet and had to be updated every two or three days in order to stay at the top of the listing. She claimed the Tenants' unit was advertised until the 3<sup>rd</sup> week of July which is when the new tenant paid the deposit for the unit.

The Tenants argued that they checked the internet and only saw the Landlords' advertisement in June and July 2013.

The Tenants did not want the Landlords to know where they were currently residing so during this proceeding they provided a different address to be used as their service address.

### Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Section 45 of the Act stipulates that a tenant may end a fixed term tenancy by providing the Landlord one month's written notice that is effective on a date that is not before the date the tenancy ends.

In this case, the undisputed evidence supports that on April 2, 2013, the parties signed a written addendum to the tenancy agreement which extended the fixed term agreement from May 1, 2013 to July 31, 2013 at 1:00 p.m. Therefore, the Tenants could not have ended this tenancy in accordance with the Act on a date that was earlier than July 31, 2013.

Therefore, as the Tenants ended the tenancy by vacating the unit on May 31, 2013, I find the Tenants breached section 45 of the Act, which caused the Landlords to suffer a loss of rent for June and July 2013.

I accept the undisputed testimony that the Landlords had advertisements listed on the internet from June 2013 to mid July 2013 to re-rent the unit for the same amount of rent. I further accept that the Landlords entered into a tenancy with a new tenant and when they received payment of the security deposit they stopped running their internet advertisements which is why no advertisements were posted during the last part of July or during August 2013.

Based on the above, I find the Landlords have met the burden of proof in meeting the test for damage or loss, as listed above, and I award them monetary compensation for loss of rent in the amount of **\$1,590.00** (2 x \$795.00).

The Landlords have been successful with their application; therefore I award recovery of the **\$50.00** filing fee

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Loss of Rent June and July 2013	\$1,590.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	\$1,640.00
<b>LESS:</b> Security Deposit \$397.50 + Interest 0.00	<u>-397.50</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$1,242.50</u></b>

### Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$1,242.50**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be 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: August 29, 2013

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Residential Tenancy Branch

