



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CML Properties  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

**MNDC, MNSD, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation in the sum of \$1,500.00 as damage or loss under the Act, compensation for unpaid rent, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The 3 co-tenant respondents were present at the hearing and confirmed receipt of the hearing package and evidence within the required time-frame.

At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Preliminary Matters

The landlord has claimed compensation for damage and loss and unpaid rent. However, the claim is in relation to loss of rent revenue only, incurred after the tenancy ended.

### Issue(s) to be Decided

Is the landlord entitled to compensation for loss of July 2013 rent revenue in the sum of \$1,500.00?

May the landlord retain the security deposit of \$750.00 in partial satisfaction of the claim?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The tenancy commenced on July 1, 2012; there were 3 co-tenants; 2 signed the agreement on June 26, 2012 and the 3<sup>rd</sup> signed on September 4, 2012.

The fixed-term ended on June 30, 2013, at which point the agreement converted to a month-to-month tenancy.

The landlord said that advertising occurred within several days of the June 20, 2013 written notice ending tenancy issued by the tenants. The landlord used their own web site, and 2 popular web sites to advertise the unit. No copies of the ads were provided as evidence and the landlord could not recall the dates the ads were placed.

The unit was shown several times; but it did not meet the needs of some potential occupants, due to the yard size and absence of air conditioning. The unit was advertised at \$1,500.00 rent.

The landlord said that he had talked with the tenants and offered to accept an end of the tenancy, without liability for July rent revenue, if written notice was given no later than June 14, 2013.

The tenants confirmed that they gave written notice on June 20, 2013 and that the landlord had possession of the unit on July 30, 2013. The tenants believe that the landlord had given approval for an end of tenancy, without liability for July rent. One co-tenant stated that he understood they needed to give written notice but the landlord did not tell them the date by which notice should be given.

The tenants submitted that the landlord had an obligation to ensure the tenants understood their rights; that some sort of warning would have been appreciated in relation to notice that was required in order to end the tenancy.

One tenant did not receive a copy of the tenancy agreement and was unaware of the terms of the agreement; although he did sign the tenancy agreement.

### Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

The tenants had each signed a fixed-term tenancy agreement that was to end effective June 30, 2013. The tenancy then converted to a month-to-month tenancy, which could be ended in accordance with section 45 of the Act, which provides:

**45** (1) *A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*

*(a) is not earlier than one month after the date the landlord receives the notice, and*

*(b) 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.*

Therefore, I find that written notice given to the landlord on June 20, 2013 was effective on July 31, 2013. There was some confusion on the part of the tenants whether the landlord would accept written notice given on June 20, 2013, as sufficient for June 30, 2013. There was indication that if written notice had been given by June 14, 2013, the landlord would not have pursued any loss of July rent revenue. However, a written mutual agreement, ending the tenancy early, was not reached.

I have considered the efforts the landlord made in advertising the rental unit and, in the absence of any evidence verifying advertisements, details outlining the dates ads were placed and the frequency of those ads, I find, on the balance of probabilities that the landlord has failed to provide evidence of a serious attempt to mitigate the loss claimed. A breach of the Act by the tenants does not bestow an automatic right to compensation. Therefore, I find that the claim for loss of rent revenue is dismissed.

Residential Tenancy Branch policy suggests that when a landlord applies to retain the deposit, any balance should be ordered returned to the tenant; I find this to be a reasonable stance. Therefore, as the landlord's application is dismissed I find that the tenants are entitled to return of the \$750.00 security deposit.

Each co-tenant has been issued copies of the monetary Order; however, the Order may be enforced through a single action. The tenants will need to reach agreement on the enforcement of the Order.

I find that the tenants have established a monetary claim in the amount of \$750.00, which is comprised of the security deposit

Based on these determinations I grant the tenants a monetary Order in the sum of \$750.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord's claim is dismissed.

The tenants are entitled to return of the \$750.00 security deposit.

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: October 07, 2013

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Residential Tenancy Branch

