



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

**MNDC, MNSD, FF**

### Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for loss of rent revenue, to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant applied requesting return of the security deposit and to recover the filing fee cost from the landlord.

Both parties were present at the hearing. 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.

### Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$3,000.00 for loss of rent revenue from June to September 2013, inclusive?

May the landlord retain the \$375.00 security deposit?

Is either party entitled to filing fee costs?

### Background and Evidence

This fixed-term tenancy commenced on October 1, 2012 and was to end effective September 30, 2013. The tenant paid a security deposit in the sum of \$375.00. Copies of the addendum and tenancy agreement were supplied as evidence.

Condition inspection reports were not completed by the landlord.

Clause 5 of the addendum prohibited the tenant from the subletting the unit.

There was no dispute that on April 9, 2013 the tenant gave written notice ending the tenancy effective the end of May. On April 11, 2013 the landlord gave the tenant a letter acknowledging the notice and reminding the tenant that she could not terminate the fixed-term agreement. The landlord indicated she would make efforts to locate a suitable tenant of her choosing. The letter indicated:

*“It might take longer than normal as I will be much more vigilant as to who is going to be a new tenant due to tenants being unable to keep their commitments...all post-date cheques will continue to be deposited on the first of each month as the lease will remain in effect whether you occupy the unit or not.”*

The parties agreed that the tenant paid May 2013 rent and that on May 16, 2013 they met at the unit. The tenant gave the landlord a letter on that date, which indicated the tenant had placed a stop-payment on her cheques, commencing June 1, 2013. The landlord did not dispute that she then told the tenant to get out of the unit. The tenant returned on May 18, 2013 to retrieve the balance of her belongings. The tenant's letter also indicated that the tenant understood she did have the right to find a sublet.

Due to the conflict that occurred on May 16, 2013 the tenant felt that any efforts on her part, to locate a new occupant, would fail. The tenant did place the unit on a popular web site and received 2 responses; she did not contact those individuals but had wanted to see if she received any interest. The tenant had located the unit after the landlord had used this same web site to advertise the unit.

The landlord commenced advertising the unit on May 31, 2013. Ads ran for 3 consecutive days in 2 major newspapers and a local newspaper; May 31, June 1 and June 2, 2013. The ads were placed again on August 2, 3 and 4, 2013. The landlord also posted an ad on a local bulletin board. Rent was not reduced over time and only 3 people enquired. The landlord did not use any web sites. The landlord also waited to advertise until the end of May as she felt placing an ad after the end of a month would attract individuals who had not given their landlord proper notice.

### 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.

A tenant may end a fixed-term tenancy, in accordance with section 45 of the Act, which provides:

*(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.*

As the landlord had not breached a material term of the tenancy I find that on April 9, 2013 the tenant gave notice ending the fixed-term tenancy effective May 31, 2013, in breach of the Act. The tenant paid May rent in full and despite the landlord's order that the tenant vacate, the tenant had legal possession of the unit until the end of May 2013.

Residential tenancy Branch (RTB) policy suggests that as a general rule a claim for loss of rent revenue may include compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. In this case the fixed term ended on September 31, 2013.

RTB policy also suggests that in circumstances where the tenant ends the tenancy agreement contrary to the provisions of the legislation, the landlord claiming loss of rental income must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes effect; in this case, May 31, 2013.

I have considered the landlord's attempt to mitigate the loss she has claimed, as required by section 7 of the Act, by making attempts to locate a new occupant as soon as they became aware of the upcoming vacancy, and find those attempts were minimal at best. The landlord did not commence any advertising until more than 6 weeks after she had received notice from the tenant and, even after she told the tenant to leave on May 16, she did not advertise for another 2 weeks. This delay in advertising was unnecessary and I have rejected the landlord's submission she could not have found good tenants if she had advertised earlier in a month.

In total the landlord advertised in 3 newspapers for a 3 day period on two separate occasions, for a total of 6 days advertising. No advertising was completed in July. Posting an ad on a bulletin board constitutes what I find to be a very minimal attempt to locate a new occupant. Further, even though the landlord located the tenant via the use of a popular web site, she chose not to use any internet site to advertise after the tenant vacated. I find the failure to utilize the web sites; particularly when the landlord had used it in the past, weakens the landlord's submission that she tried to minimize the loss she has claimed.

In all cases a landlord's claim is subject to the statutory duty to mitigate a loss by making reasonable efforts to re-rent the rental unit at an economic rent. Outside of the 6 days of newspaper ads and a bulletin posted in a local community, I had no evidence before me that the landlord actually made a serious attempt to locate new occupants for this particular unit. The landlord confirmed that she did not lower the rent, in an attempt to further minimize any loss.

I find that the failure of the tenant to provide notice in accordance with the Act did not automatically entitle the landlord to compensation for the loss attributed to the tenant's violation of the Act. The landlord also had a responsibility to provide evidence of their attempt to mitigate the loss by seeking an occupant for the tenant's unit and I find those attempts were minimal and fail to support the claim for loss of revenue.

Therefore, I find that the landlord's claim for loss of rent revenue is dismissed.

Therefore, I find that the tenant is entitled to return of the \$375.00 security deposit.

Based on these determinations I grant the tenant a monetary Order in the sum of \$375.00. 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.

I decline filing fee costs to the tenant as her application was not required. Residential Tenancy Branch policy suggests the deposit be returned to a tenant when a landlord's claim fails.

I note that the landlord has included terms in the tenancy agreement that fail to comply with the Act; the landlord was encouraged to review the tenancy agreement and addendum against the standard terms, which are included in the Residential Tenancy Regulation.

### Conclusion

The landlord's claim is dismissed.

The tenant is entitled to return of the security deposit.

The tenant is not entitled to filing fee costs.

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: September 16, 2013

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Residential Tenancy Branch