



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding bc IMC Realty Corporation dba Panarama Tower  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, 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 money owed or compensation for damage or loss and for recovery of the filing fee.

The landlord's agent (hereafter "landlord") attended the telephone conference call hearing; the tenant did not attend.

The landlord testified that they served the tenant with their Application for Dispute Resolution and Notice of Hearing by registered mail on October 16, 2013. The landlord supplied documentary evidence containing the tracking number of the registered mail.

The landlord further testified that the address used to serve their application and Notice of Hearing was the tenant's daughter. This forwarding address was listed on the condition inspection report and signed by the tenant's daughter, showing that it was the tenant's forwarding address.

Based upon the submissions of the landlord, I find the tenant was served notice of this hearing in a manner complying with section 89(1) of the Residential Tenancy Act to a written forwarding address provided by the tenant's agent and the hearing proceeded in the tenant's absence.

The landlord was 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 oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Is the landlord entitled to monetary compensation and to recover the filing fee?

### Background and Evidence

The landlord provided oral and written evidence that this fixed term tenancy began on April 11, 2013, monthly rent was \$1325, and that the tenant's security deposit has been returned to the tenant.

The landlord stated that the fixed term of the tenancy agreement was through March 31, 2014; however the tenancy ended as of September 8, 2013, the date of the final inspection with the tenant's daughter.

The landlord's monetary claim listed in their application is \$2650, comprised of loss of rent revenue for the months of October and November 2013, due to the tenant's violation of the fixed term portion of the tenancy agreement.

At the hearing the landlord requested that their monetary claim be increased to include prorated loss of revenue for 6 days in December, as new tenants moved into the rental unit on that date.

The landlord's relevant documentary evidence included the tenancy agreement, the condition inspection report, the tenant's notice that he was vacating the rental unit, the landlord's written response to the tenant, and copies of advertisements for the rental unit seeking new tenants.

The landlord submitted that the tenant's insufficient notice to vacate the rental unit prior to the end of the fixed term caused the landlord to suffer a loss of revenue for October, November, and 6 days of December.

The notice supplied by the landlord shows that on August 20, 2013, the tenant provided the landlord notice that he was vacating the rental unit as of the end of August 2013. In turn the landlord gave the tenant a written notice on that date, that he, the tenant, was responsible for rent for September and for the balance of the fixed term if the landlord was unable to re-rent the rental unit.

In response to my question, the landlord acknowledged that they advertised the rental unit for a monthly rent greater than the tenant was paying as the landlord worked on the rental unit. The monthly rent asked for by the landlord was \$1345.

When questioned further, the landlord confirmed never reducing the amount of monthly rent requested in their advertisements.

### 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 issue of loss of rent revenue for the October, November, and a part of December, 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.

In the case before me, I accept that the tenant provided insufficient notice that he was ending the fixed term tenancy agreement prior to the end of the fixed term and I find the tenant was responsible to pay monthly rent to the landlord until the end of the fixed term, here, March 31, 2014, subject to the landlord's requirement that they take reasonable measures to minimize their loss.

In this instance, I find the landlord failed to submit sufficient evidence that they took reasonable steps to mitigate their loss of unpaid rent. I reached this conclusion after examining the landlord's proof of their advertisements. Although the landlord gave as reason that the requested monthly rent was increased due to work performed on the rental unit, the evidence shows that the rental unit was advertised for an increased monthly rent beginning the day the tenant gave his notice. Additionally, the landlord failed to provide proof that any work was performed, leading to increased monthly rent.

I find it reasonable that rather than increase the monthly rent, a landlord would decrease the requested monthly rent after a period of time in order to more promptly attract new tenants. Instead the landlord left the increased advertised monthly rent during the months of August, September, October, and perhaps November, as the landlord was not successful in finding new tenants until December 2013, according to the landlord.

Due to the above, I find the landlord failed to take reasonable measures to minimize their loss, step 4 of their burden of proof, and I therefore dismiss their monetary claim for loss of rent revenue.

I likewise dismiss their request for recovery of the filing fee.

Conclusion

The landlord's application is dismissed.

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: January 27, 2014

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Residential Tenancy Branch