



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0821149 BC LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing was convened by way of a conference call in response to a Landlord's Application for Dispute Resolution (the "Application") for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"). The Landlord also applied to keep the Tenant's security deposit and to recover the filing fee for the cost of making the Application.

An agent for the Landlord and the Tenant appeared for the hearing and provided affirmed testimony during the hearing. No issues in relation to the service of the Notice of the Hearing documents, which were served to the Tenant by registered mail, were raised by the parties.

### Preliminary Issues

The Landlord provided written evidence prior to the hearing in accordance with the Rules of Procedure. The Tenant indicated that she had submitted written evidence to the Residential Tenancy Branch on May 9, 2014. However, there was no record of such evidence being received by the Residential Tenancy Branch on this file. However, even if this evidence was submitted by the Tenant as testified to, then it still would not have been received by the deadlines stipulated by the Rules of Procedure, which are clearly explained in the fact sheet that accompanied the hearing documents served to the Tenant.

The Tenant requested that the hearing be adjourned to allow this evidence to be served. However, the Landlord objected to a potential adjournment stating that he had not received any of this evidence from the Tenant. The Tenant responded stating that she did not send the Landlord a copy because the Landlord would not have received it in time and that she knows the Landlord does not pick up mail.

However, I found that the Tenant's reasoning for not serving the Landlord the evidence and for not serving the Residential Tenancy Branch in time, coupled with there being no record of such evidence being received by the Residential Tenancy Branch, was not sufficient for me to grant the adjournment. The Tenant had sufficient time to plan and prepare for this hearing and it is reasonable to expect that evidence is submitted before the stipulated deadlines for this hearing.

As a result, the hearing continued in the absence of the Tenant's written evidence which she claimed that she had submitted.

The hearing process was explained and the participants were asked if they had any questions. Both parties were provided the opportunity to present their evidence and to cross-examine the other party, and make submissions to me.

I have reviewed the evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this decision.

#### Issue(s) to be Decided

- Did the Tenant follow the provisions of the Act in ending a month to month tenancy?
- Is the Landlord entitled to the loss of one month rent?
- Is the Landlord entitled to keep the Tenant's deposit in partial satisfaction of the Landlord's claim?

#### Background and Evidence

Both parties agreed that this tenancy of a suite in a residential building started on January 10, 2014 on a month to month basis. A written tenancy agreement was completed and the Landlord collected a security deposit in the amount of \$257.00 and a further \$100.00 as a key deposit which was paid on January 14, 2014. Monthly rent was payable by the Tenant in the amount of \$515.00 on the first day of each month.

The Landlord testified that on January 24, 2014 he discovered the Tenant's keys to the rental suite had been placed underneath the door of his office with a note that detailed the Tenant had vacated the rental suite.

The Landlord testified that the Tenant failed to give proper notice as required by the Act and as a result, claims one month of lost rent from the Tenant. The Landlord testified

that he was able to re-rent the suite for March, 2014 after extensively advertising the rental suite on-line. The Landlord also testified that the Tenant had not provided a forwarding address and he had used the address on the Tenant's security deposit cheque to serve the Notice of Hearing documents for this hearing.

The Tenant testified that she had left the tenancy because of health and safety reasons and that the Act enabled her to leave a tenancy on this basis. The Tenant testified that the bathroom ceiling in her rental suit was leaking water and as a result, the water leaked into the bathroom ceiling fan causing extensive mold issues.

The Tenant testified that the water leaking from the ceiling dripped on her as she used the bathroom facilities and was beginning to affect her quiet enjoyment of the rental suite. The Tenant testified that she began to suffer from headaches and a scratchy throat as a result of the mold in the suite.

When the Tenant was questioned whether the mold and leaking ceiling issues testified to were addressed with the Landlord, the Tenant explained that she had phone conversations with the Landlord about this but nothing was done to rectify the problem. When the Tenant was questioned about whether this had been addressed with the Landlord in writing and whether the Landlord had been given a chance to correct the problem, the Tenant testified that she thought she sent the Landlord an e-mail or text message about the problem but was not sure and failed to provide this evidence prior to this hearing.

During my questioning and clarification of the Tenant in regards to her written notice to the Landlord about the problems with the rental suite, the Tenant interrupted me several times and was asked repeatedly to allow me finish my questioning before she responded.

The Tenant testified that she had given written notice to the Landlord about the problems in a letter which she attached to the keys when she vacated the rental suite. In the letter the Tenant testified that it detailed the problems with the tenancy and that she was leaving the tenancy because she had had enough and that things were not working out. The Tenant submitted that this was her written notice regarding the problems inside the rental suite and the ending of the tenancy.

The Landlord rebutted the Tenant's testimony stating that the Tenant had not alerted him to any of the problems testified to by the Tenant, either verbally or in writing. The Landlord testified that there was a water leak problem in the rental unit but this was because of condensation build up on the toilet.

The Landlord testified that after receiving the Tenant's note and keys, he attended the rental suite and there was no sign or smell of mold in the rental suite as testified to by the Tenant.

When the Tenant was invited to respond and cross examine the Landlord, there was no response from the Tenant, despite repeated requests for the Tenant to talk. However, the conference call attendance log system showed the Tenant still being in attendance and no warning had been given by the system that the Tenant had exited the conference call. The Tenant was repeatedly asked to acknowledge or answer but there was no response.

The hearing after this point concluded as I had obtained sufficient information from the parties to make a decision in this matter.

### Analysis

Section 45(1) of the Act explains the Tenant's obligations when ending a month to month tenancy. The Act states that a Tenant **must** give the Landlord a notice of at least one **full rental month** before ending the tenancy and this **must** be done in writing as required by section 52 of the Act.

However, section 45(3) of the Act also states that a Tenant may end a tenancy if the Landlord has failed to comply with a material term of the tenancy and has not corrected the breach within a reasonable period after the Tenant gives the Landlord written notice of the breach.

In this case, I find that the Tenant provided insufficient evidence that the Landlord had breached a material term of the tenancy and that written notice of the breach and a reasonable time for correction of the alleged breach was provided to the Landlords.

The Tenant indicated that she may have written to the Landlord by text message or e-mail about the mold problems in her rental suite but she would have to search for this evidence. As this evidence was not before me at the time of this hearing and would have been reasonably expected to be made available in response to a Landlord's claim for compensation, I find that the Tenant failed to provide sufficient evidence in support of her obligations to end the tenancy as required by the Act detailed above.

As a result, I find that had the Tenant provided the Landlord with proper written notice, this would have enabled the Landlord to re-rent the suite for the following month.

However, as the Tenant provided written notice on January 24, 2014, I find that there would not have been sufficient time for the Landlord to rent out the suite for the beginning of February, 2014. As a result, I award the Landlord one month lost rent for February, 2014 in the amount of **\$515.00**.

As the Landlord has been successful in their claim, I also award the Landlord the **\$50.00** filing fee for the cost of making the Application pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Landlords is \$565.00.

As the landlord already holds \$357.50 in the Tenant's deposits, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 38(4) (b) of the Act. As a result, the Landlord is awarded \$207.50.

However, the Landlord is cautioned in relation to section 19(1) of the Act which sets the limits on the amount of a security deposit that can be requested from the Tenant at the start of a tenancy and section 7 of the Residential Tenancy Regulation which explains the non refundable fees that may be charged by a Landlord, a key deposit not being one of them.

### Conclusion

For the reasons set out above, I grant the Landlords a Monetary Order pursuant to Section 67 of the Act in the amount of **\$207.50**. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenant fails to make payment in accordance with the Landlords' instructions.

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: May 16, 2014

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Residential Tenancy Branch

