



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNR, MNSD, MNDC, FF

### **Introduction**

This hearing was convened in response to cross applications.

On January 16, 2014 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit and to recover the fee for filing this Application for Dispute Resolution.

On February 12, 2014 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent; a monetary Order for money owed or compensation for damage or loss; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Tenant stated that the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wishes to rely upon as evidence were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Landlord submitted a document to the Residential Tenancy Branch on May 01, 2014, a copy of which was not served to the Tenant. As it was not served to the Tenant it was not accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

### Issue(s) to be Decided

Is the Landlord entitled to unpaid rent/lost revenue and should the security deposit be retained by the Landlord or returned to the Tenant?

### Background and Evidence

The Landlord and the Tenant agree that they signed a tenancy agreement in November of 2013. The parties agree that the occupant is named on the tenancy agreement but he did not sign the agreement nor did he view the rental unit. A copy of this agreement was submitted in evidence.

The Landlord and the Tenant agree that the tenancy agreement was for a fixed term that began on December 01, 2013 and was to end on December 01, 2014. The parties agree that the tenancy agreement required the Tenant to pay monthly rent of \$1,750.00 by the first day of each rent, although no rent was paid. The parties agree that a security deposit of \$850.00 was paid.

The Landlord and the Tenant agree that on November 21, 2013 or November 22, 2013 the occupant informed the Landlord that they would not be moving into the rental unit. The parties agree that the Landlord and the occupant subsequently spoke on the telephone and the Landlord informed the occupant that he would return the security deposit if he was able to find a new tenant for December 01, 2013. The Tenant stated that the Landlord never informed her or the occupant that he would be seeking compensation for lost revenue.

The Landlord and the Tenant agree that keys were never provided for the rental unit and that the Tenant, for reasons unrelated to the rental unit, did not move into the rental unit.

The Landlord and the Tenant agree that the Tenant provided the Landlord with a forwarding address, by mailing it on December 24, 2013, via registered mail. The Landlord agreed that he received the forwarding address in the mail shortly thereafter. The parties agree that the Tenant did not give the Landlord written authorization to retain any portion of the security deposit and that no part of the deposit was returned.

The Landlord stated that on November 21, 2013 or November 22, 2013 he advertised the rental unit on two popular websites and that he regularly updated those

advertisements. He stated that prior to entering into a tenancy agreement with the Tenant he had several parties interested in the unit prior to signing an agreement with the Tenant but he was unable to find a suitable tenant until February 01, 2014. The Landlord is seeking compensation for lost revenue for December of 2013 and January of 2014.

The Tenant stated that she has not seen copies of the advertisements the Landlord placed on the website, although she acknowledged that she did not search for them.

The Landlord stated that he permitted his former tenant to remain in the rental unit, free of charge, for most of the month of December. He stated that he allowed the former tenant to remain in the unit because he only had a small amount of furniture in one bedroom and that the former tenant was prepared to vacate the rental unit as soon as the Landlord found a new tenant. He stated that he permitted the former tenant to remain in the rental unit without charge as a favour to that former tenant, as he did not have another renter and he understood the former tenant could not afford to pay rent.

The Tenant argued that a fully vacant rental unit is easier to rent and that the presence of this former tenant interfered with the Landlord's ability to find a new tenant.

The Tenant argued that if the Landlord had informed her that he was seeking compensation for lost revenue, they could have either sublet the unit they were renting or they could have sublet this unit.

### Analysis

On the basis of the undisputed evidence, I find that the Landlord and the Tenant entered into a written tenancy agreement that was to begin on December 01, 2013. As there is no evidence that the occupant signed this agreement, I find that he did not enter into an agreement with the Landlord and he is not, therefore, obligated to comply with the terms of that written tenancy agreement. I therefore dismiss the Landlord's application for a monetary Order naming this party.

Section 44(1)(a) of the *Residential Tenancy Act (Act)* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 45, 46, 47, 48, 49, 49.1, and 50 of the *Act*. The evidence shows that neither party gave proper notice to end this tenancy in accordance with these sections and I therefore find that the tenancy did not end pursuant to section 44(1)(a) of the *Act*.

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. As the fixed term of this tenancy has not yet expired, I find that the tenancy did not end pursuant to section 44(1)(b) of the *Act*.

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. As there is no evidence that the parties agreed in writing to end the tenancy, I find that the tenancy did not end pursuant to section 44(1)(c) of the *Act*.

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. I find that this tenancy abandoned the rental unit by opting not to move into the unit. I therefore find that this tenancy ended on, or before, December 01, 2013 when the Tenant opted not to move into the unit.

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. As there is no evidence that this tenancy agreement was frustrated, I find that the tenancy did not end pursuant to section 44(1)(e) of the *Act*.

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. As there is no evidence that the director ordered an end to this tenancy, I find that the tenancy did not end pursuant to section 44(1)(f) of the *Act*.

I find that the Tenant did not comply with section 45(2) of the *Act* when she ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement. I therefore find that the Tenant must compensate the Landlord for any losses the Landlord experienced as a result of the Tenant's non-compliance with the *Act*, pursuant to section 67 of the *Act*.

.As the Landlord was unable to find a new tenant until February 01, 2014 I find that the Landlord is entitled to compensation for lost revenue from December of 2013 and January of 2014, in the amount of \$3,500.00.

In determining compensation for lost revenue, I accepted the Landlord's testimony that he began advertising the rental unit on two popular websites in late November of 2013 and that he regularly updated those advertisements until he found a new tenant. Although the Landlord submitted no documentary evidence to corroborate this testimony, I can find no reason to discount his testimony. I therefore find that the Landlord made a reasonable effort to mitigate his losses.

In determining compensation for lost revenue I have placed little weight on the fact that the former tenant remained in the rental unit for the majority of December of 2013. On the basis of the undisputed testimony that this individual was unable to pay rent, I find that his presence in the rental unit did not negate the claim that the Landlord suffered a loss of revenue for December. I have also placed little weight on the Tenant's argument that it is easier to rent a fully vacant suite, as the vast majority of rental units are viewed by prospective tenants while the unit is fully occupied.

In determining compensation for lost revenue I have placed little weight on the argument that the Tenant could have attempted to sublet the rental unit or the rental unit they were occupying if they knew the Landlord was going to seek compensation for lost revenue. I find that the Tenant knew, or should have known, her obligations under the tenancy agreement and it is not incumbent upon the Landlord to specifically advise her that he intends to enforce the terms of the agreement.

In circumstances where a tenant stated that they had searched the website and was able to locate an advertisement, I would require corroboration of a landlord's testimony in regards to his attempt to advertise the rental unit. In these circumstances, however, the Tenant acknowledged that she did not search the websites for advertisements and she has, therefore, given me no reason to doubt the veracity of the Landlord's testimony.

On the basis of the undisputed evidence, I find that the Tenant mailed a forwarding address to the Landlord on December 24, 2013 and that the Landlord received that address. Section 90 of the *Act* stipulates that a document that is served by mail is deemed to be received on the fifth day after it is mailed. I therefore find that the Landlord received the forwarding address by December 29, 2013.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits. To comply with section 38(1) of the *Act* the Landlord would have had to either repay the deposit or file the Application for Dispute Resolution by January 13, 2014, which is fifteen days after the forwarding address was received and more than fifteen days after the tenancy ended. As the Landlord has not repaid the security deposit and he did not an Application for Dispute Resolution until February 12, 2014, I find that the Landlord failed to comply with section 38(1) of the *Act*.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit that was paid.

I find that the Application for Dispute Resolution filed by each party has merit and I therefore find that they are each responsible for the cost of filing their own Application for Dispute Resolution.

### Conclusion

I find that the Tenant has established a monetary claim, in the amount of \$1,750.00, which is comprised of double the security deposit. I find that the Landlord has established a monetary claim, in the amount of \$3,500.00, in compensation for lost revenue. After offsetting the two claims, I find that the Tenant owes the Landlord \$1,750.00.

Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$875.00, in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$875.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, 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: May 01, 2014

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Residential Tenancy Branch

