



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**MNR, 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 for unpaid rent, loss of rent revenue, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

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 present affirmed oral testimony and to make submissions during the hearing.

### Preliminary Matters

The landlord made a seventeen page evidence submission sent to the tenant via registered mail on July 10, 2014. There was no dispute that the tenant had received the registered mail sent in April 2014; containing the notice of hearing package. However, since that time the tenant had relocated and she did not receive the evidence.

The landlord said that he served the tenant via registered mail that would be deemed received within the required 5 days time-frame. I explained that the Residential Tenancy Branch Rules of Procedure require a party to serve evidence, to the extent possible, with their application. The landlord failed to do so and relied upon the minimum time for service. This resulted in a failure of service of the evidence.

The landlord was given the option of an adjournment to allow service and a rebuttal submission by the tenant. The landlord declined that option and elected to proceed on the basis of oral submissions.

There was no claim for unpaid rent; only loss of rent revenue.

Issue(s) to be Decided

Is the landlord entitled to compensation for the loss of 4 months' rent revenue in the sum of \$4,550.00?

May the landlord retain the security deposit?

Background and Evidence

On March 19, 2014 the parties signed a tenancy agreement that was to commence on April 15, 2014. The tenant said she never received a copy of the agreement and was not clear on the terms. The landlord said it was a fixed term tenancy ending April 15, 2015.

Rent was \$1,300.00 per month; a security deposit in the sum of \$650.00 was paid.

There was no dispute that on March 26, 2014 the tenant emailed the landlord indicating she had to withdraw from the agreement. The tenant was having financial problems. The landlord replied to the tenant, explaining that they were sorry she was having financial problems and that they would do their best to re-rent the unit for May 1, 2014. The landlord said they had chosen the tenant over several other candidates and had declined the chance to rent the unit effective April 1, 2014, as they had liked the tenant.

On March 26, 2014 the landlord renewed their advertisement on a popular web site. Rent was listed at \$1,300.00. The ads were updated on April 6, May 27, June 7 and July 4, 2014. The landlord also entered the site on a regular basis to renew them. On June 7 the rent was reduced to \$1,250.00 and several weeks ago rent was again reduced to \$1,150.00.

The landlord also put a poster at 2 of the major grocery stores in the area. Those posters were replaced weekly as the stores remove all ads every Monday.

The landlord has had ten to fifteen viewings of the unit and believes they have a new occupant for August 1, 2014.

The tenant explained her financial situation, which she realized would make it difficult for her to pay the rent. On March 26, 2014 the tenant provided the landlord with her forwarding address and requested return of the security deposit. Within several days the landlord applied claiming against the deposit. The tenant said that the landlord then threatened to obtain a lawyer and demanded payment of \$15,800.00.

The tenant told the landlord that if she moved in she would end up not being able to afford the rent. On March 27, 2014 the tenant then told the landlord she would move in but first she would check with the City to see if the unit was a legal suite. The tenant said she did check with the City and found that there had never been a permit issued for

the suite. The landlord did not provide her with any evidence that the suite was legal; as she had requested.

The landlord did not respond to the tenant's March 27, 2014 email.

The tenant said that on April 9, 2014 she started to receive calls from a collection agency who apparently had copies of emails sent to the landlord. The collection agency also left a message for her at work. The tenant said this person was aggressive and intimidating.

The landlord said that he did not call the collection agency prior to the start of the tenancy; but, once the tenant checked emails during the hearing, the landlord agreed that he had in fact called the collection agency on April 9, 2014.

The landlord said that the collection agency was only to remind the tenant of her obligations as the tenant had said she would bounce cheques. The landlord understood that once the 15<sup>th</sup> of the month arrived it would be clear the tenant had breached the agreement. The tenant said that a collection agency is hired to obtain funds, not to remind people of their financial obligations.

The tenant said that the landlord has provided inconsistent testimony and that leads her to question whether the unit has actually been vacant. The landlord had also told the tenant she would have to pay rent in cash, which caused her further concern.

The tenant made no effort to take possession of the rental unit; but said that was due to the actions of the landlord and the collection agency and other concerns that had developed.

A copy of the tenancy agreement was requested of the landlord. The tenant declined the offer made to have a copy sent to her.

### Analysis

A copy of the tenancy agreement was supplied by the landlord, as requested. From the evidence before me I find that this was a fixed term tenancy that was to end effective April 15, 2015. The agreement was signed by each party on March 19, 2014. I note that tenancy agreement includes some terms that do not comply with the Act and would, therefore, be unenforceable such as disposition of the security deposit.

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.

Mitigation is determined by section 7 of the Act; which provides:

***Liability for not complying with this Act or a tenancy agreement***

- 7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*  
(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

Section 45 of the Act sets out how a party may end a tenancy. A landlord may end a fixed term agreement only for cause or unpaid rent. A tenant must have evidence of a material breach of the agreement by the landlord.

Section 16 of the Act provides:

- 16** *The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.*

Therefore, I find that when the tenant signed the agreement and paid the security deposit a tenancy was created and that the tenant then terminated the tenancy in breach of the Act. Even though the tenant did not take possession she was not in a position to end the tenancy. The reasons given by the tenant were unfortunate, but they are not contemplated by the legislation. Once the agreement is signed, generally, the rights and obligations take effect.

Residential Tenancy Branch policy suggests that when a tenant breaches an agreement the landlord may make a claim that would put them in the same position as if the breach had not occurred. A landlord is bound to mitigate any loss claimed.

I have considered the efforts made by the landlord to rent the unit and find, on the balance of probabilities, that efforts made up to June 15, 2014 were sufficient. Rent had been reduced and 1 web site and 2 posters were in place and updated regularly. However, after this time I find it would have been reasonable for the landlord to further mitigate by expanding the search through the utilization of newspapers and other popular internet sites. While the landlord did reduce the rent sought, I find the efforts at advertising, after 2 full months of attempting to rent the unit do not support a claim for a loss beyond June 15, 2014. Even though it appears the efforts to rent may now have succeeded; I find, on the balance of probabilities that further mitigation could have been expected to give an earlier result.

Therefore, I find that the landlord is entitled to compensation for loss of rent revenue from April 15 to June 15, 2014, inclusive, in the sum of \$2,600.00. The balance of the claim is dismissed.

I find that the landlord's application has merit and that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$650.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order in the sum of \$2,000.00. 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.

### Conclusion

The landlord is entitled to compensation in the sum of \$2,600.00.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

The balance of the claim is dismissed.

This decision is final and binding and 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: July 23, 2014

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Residential Tenancy Branch

