



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDC, MNSD, FF  
MNSD, FF

### Introduction

This hearing concerns 2 applications: i) by the landlord for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; and ii) by the tenant for a monetary order reflecting return of the security deposit / and recovery of the filing fee.

Both parties attended and gave affirmed testimony.

### Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

There is no written tenancy agreement in this dispute. The parties agree that the tenant paid \$200.00 to the landlord on February 10, 2014. It appears that this payment was intended to hold the unit pending the tenant's final decision around whether or not he wished to proceed with a month-to-month tenancy beginning March 01, 2014. Later, on February 10, 2014, the tenant informed the landlord that he did not wish to proceed with the tenancy. The landlord testified that despite on-line advertising, it was not until March 19, 2014 when new renters took possession of the unit.

During discussion between the parties in February 2014, it appears that without any utilities it was agreed that rent would be \$990.00 per month, and that with utilities included the monthly rent would be \$1,115.00.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Section 16 of the Act speaks to **Start of rights and obligations under tenancy agreement**:

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.

Section 45 of the Act speaks to **Tenant's notice**, in part:

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent becomes payable under the tenancy agreement.

Section 7 of the Act addresses **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.

Based on the documentary evidence and testimony, and in consideration of the above statutory provisions, I find that the parties entered into a tenancy agreement on February 10, 2014, at which time I find that the tenant effectively paid a security deposit to the landlord. In the absence of any conclusive evidence around whether it had been agreed that rent in this particular case would be \$990.00 or \$1,115.00, and in the

absence of any documentary evidence pertinent to the actual cost of monthly utilities, I find on a balance of probabilities that the monthly rent is \$990.00.

I further find that the tenant failed to give notice in accordance with the Act to end the month-to-month tenancy. However, in the absence of documentary evidence to support the landlord's claim that, in order to mitigate loss, on-line advertising began in a timely fashion after the tenant declined to continue the tenancy, I find that the landlord has established entitlement limited to **\$287.46**, which is calculated as follows:

$\$990.00 \text{ (monthly rent)} \div 31 \text{ (\# of days in March 2014)} = \$31.94 \text{ daily rent}$

$\$31.94 \text{ (daily rent)} \times 18 \text{ (\# of days unit vacant in March 2014)} = \$574.92$

$\$574.92 \div 2 = \textbf{\$287.46}$  (net entitlement)

As the landlord has achieved a measure of success with his application, I find that he has also established entitlement to recovery of the full **\$50.00** filing fee.

**Total entitlement: \$337.46** (\$287.46 + \$50.00)

I order that the landlord retain the security deposit of **\$200.00**, and I grant the landlord a **monetary order** for the balance owed of **\$137.46** (\$337.46 - \$200.00).

### Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$137.46**. This order may be served on the tenant, filed in the 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: July 07, 2014

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Residential Tenancy Branch

