



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNDC, MND, MNSD, FF

### **Introduction**

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for damage; 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 and Notice of Hearing were sent to the Tenant, via registered mail, on January 10, 2014. The Tenant acknowledged receipt of these documents.

At the hearing on April 24, 2014 the Landlord requested an adjournment, as she was medically unfit to participate in the proceedings. The adjournment was granted to provide the Landlord with a fair and reasonable opportunity to participate in the hearing.

The hearing was reconvened on September 10, 2014 and was concluded on that date.

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

The Landlord submitted no evidence for these proceedings.

On April 17, 2014 the Tenant submitted numerous documents to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Tenant stated that these documents were sent to the Landlord, via registered mail, on April 17, 2014. She stated that the Canada Post website declares that this package was available for delivery to the Landlord on April 21, 2014 and that it was picked up by the Landlord on April 25, 2014. The Landlord stated that she did not receive these documents until April 25, 2014.

The Landlord argued that the Tenant's evidence package should not be admitted as evidence as she did not receive it until after the proceedings commenced and she did not have an opportunity to submit evidence in response to the documents in the Tenant's evidence package.

Residential Tenancy Branch Rules of Procedure stipulate that a Respondent's evidence must served on the Applicant as soon as possible and at least five (5) days before the dispute resolution proceeding. Although the Tenant's evidence was served within the five day time limit, it was not served as soon as possible. I therefore refuse to accept the Tenant's evidence for the following reasons:

- The documents were not received by the Landlord prior to the hearing on April 24, 2014
- The majority of the evidence was available in 2013 and could have been served in a more timely manner
- The delay in serving the evidence prevented the Landlord from submitted evidence in response to the Tenant's evidence
- The Landlord bears the burden of proving she is entitled to compensation so most of the Tenant's documentary evidence is not necessary.

At the hearing on April 24, 2014 and in an interim decision the parties were advised that no further evidence would be accepted. This decision was based on Residential Tenancy Branch Rules of Procedure which stipulate that evidence must served on the as soon as possible and at least five (5) days before the start of the dispute resolution proceeding.

### Preliminary Matter

At the conclusion of the hearing on September 10, 2014, the Landlord was advised that her claims for compensation for damage to the rental unit were being dismissed due to the lack of corroborating evidence, at which point she asked to withdraw those claims. She stated that she wished to withdraw the claims because she had not had an opportunity to submit evidence due to her medical issues.

The Landlord was not permitted to withdraw the claim for damages for the following reasons:

- She did not attempt to withdraw those claims until after she was verbally advised of my decision, at which point the matter had been determined
- The Landlord filed this Application for Dispute Resolution on January 10, 2014 and therefore had ample opportunity to submit evidence in support of her claims prior to commencement of the proceedings on April 24, 2014
- The Landlord could have applied to withdraw her claims on April 24, 2014 instead of requesting an adjournment
- Further delaying this matter would be unfair to the Tenant, given the Landlord has already been granted an adjournment.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent/loss of revenue and for compensation for damage to the rental unit?

Background and Evidence

The Landlord and the Tenant agree that they entered into a fixed term tenancy agreement, the fixed term of which began on August 01, 2013 and ended on July 31, 2014. The parties agreed that the rent for this period would be \$1,600.00, due by the first day of each month. The parties agree that a security deposit of \$800.00 was paid for a previous fixed term tenancy and was subsequently applied to this tenancy.

The Landlord and the Tenant agreed that on November 14, 2014 the Tenant sent the Landlord an email in which she notified the Landlord of her intent to vacate the unit on December 31, 2013. The parties agree that the rental unit was vacated on December 31, 2013.

The Landlord has claimed compensation for lost revenue for the months of January, February, March, April, May, June, and July of 2014. At the hearing she amended this claim, as she was able to rent the unit for April 15, 2014. She is, therefore, only seeking compensation for the period between January 01, 2014 and April 14, 2014.

The Landlord stated that she began advertising the rental unit on one popular website and on one less popular website on December 01, 2013, which she updated at least once per week, until she found a new occupant. The Tenant stated that she checked the popular website in December of 2013; that she noticed an advertisement had been placed on December 01, 2013; that she noticed this advertisement was not updated until December 15, 2013; that a photograph was not included until the December 15, 2013 advertisement; and that the initial advertisements lacked detail. The Tenant stated that she submitted print outs of these two advertisements to the Residential Tenancy Branch, although they were not accepted as evidence.

The Landlord stated that she believes she added a photograph to her internet advertisements in January of 2014. She stated that she is not certain when she updated her internet advertisements, but she believes it was once per week. The Tenant stated that she regularly checked the popular website and noted that the advertisement was updated very infrequently.

The Tenant stated that after they signed their second fixed term tenancy agreement, the parties verbally agreed that the Tenant could end the tenancy prematurely providing she gave the Landlord as much notice as possible. The Landlord stated that she did not agree to allow the Tenant to end the tenancy prematurely.

The Landlord stated that the Tenant offered to find a new occupant but did not assist with that process. The Tenant stated that she offered to help find a new occupant but the Landlord did not appear to want her assistance.

The Landlord and the Tenant agree that there is a clause in their tenancy agreement that requires the Tenant to pay the equivalent of two month's rent on, or before, the day they vacate if the Tenant "breaks the Residential Tenancy Agreement". The parties both stated that they understood that they could end this tenancy prematurely only if they paid two month's rent prior to vacating the rental unit.

The Landlord is seeking compensation, in the amount of \$300.00, to repair a hole in the carpet, which the Landlord speculates was made by an animal. The Tenant acknowledged that there was a very small hole in the carpet. She stated that the hole is so small she did not notice it until it was pointed out by the Landlord; that it may have been present at the start of the tenancy; and that she has not permitted animals in her rental unit.

The Landlord is seeking compensation, in the amount of \$200.00, to repair the balcony door, which she contends did not slide properly at the end of the tenancy. The Tenant stated that the lock on this door has always been hard to operate but the door opened/closed properly at the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$100.00, to repair the shower control, which she contends was loose at the end of the tenancy. The Tenant stated that the shower control was not loose at the end of the tenancy and that it was functioning properly.

The Landlord is seeking compensation, in the amount of \$100.00, to repair the fridge. She contends that the slide rail for one of the interior drawers was damaged at the end of the tenancy. The Tenant stated that the slide rail was damaged at the start of the tenancy and that it was in the same condition at the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$50.00, to repair the blinds. The Landlord and the Tenant agree that there was minor damage to the base of the blinds at the end of the tenancy. The Tenant stated that she did not damage the blinds during her tenancy and she speculates the damage pre-existed her tenancy.

The Landlord is seeking compensation, in the amount of \$30.00, for cleaning the patio. The Landlord stated that the patio needed to be swept and washed. The Tenant stated that she cleaned the patio at the end of her tenancy.

The Landlord is seeking compensation, in the amount of \$20.00, for replacing a lock that was provided to the Tenant for the storage locker. The Tenant agrees that she inadvertently took the lock with her when she vacated the unit. The Landlord did not submit a receipt to show the cost of replacing the lock.

The Landlord claimed compensation, in the amount of \$1,000.00, for replacing a rental agent fee. The Landlord withdrew this claim at the hearing.

### Analysis

On the basis of the undisputed evidence, I find that the Landlord and the Tenant entered into a fixed term tenancy agreement, the fixed term of which began on August 01, 2013 and ended on July 31, 2014, for which the Tenant was required to pay rent of \$1,600.00 by the first day of each month.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

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 ended when the Tenant vacated the rental unit on December 31, 2013.

I find that the Tenant did not comply with section 45(2) of the *Act* when she abandoned the tenancy on a date that was earlier than the end date specified in the tenancy agreement. As the Tenant did not have the right to provide written notice to end the tenancy on December 31, 2013, the Landlord acted reasonably by not entering into a tenancy agreement with another occupant until the Tenant vacated the rental unit. Had the Tenant opted to remain in the rental unit after December 31, 2013, the Landlord would not have had grounds to end the tenancy on that date and she would have been unable to fulfill her commitment to the new occupant.

I therefore find that the Landlord was not obligated to advertise the rental unit until after December 31, 2013, when she had legal possession of the rental unit. I find that the Tenant's decision to prematurely end this fixed term tenancy directly contributed to the lost revenue the Landlord experienced for the month of January.

In determining that the Landlord is entitled to compensation for lost revenue for January of 2014, I have placed no weight on the Tenant's submission that the Landlord did not mitigate her loss for January by diligently advertising the rental unit. As the Landlord was not obligated to advertise the rental unit in December, the details of the advertisements she did place is irrelevant, including the frequency of the advertisements and the detail/photographs in those advertisements.

As the Landlord was not obligated to advertise until January 01, 2014, I find it unlikely she would have been able to find a new occupant for the beginning of January. I therefore find that the Landlord is entitled to compensation for January of 2014, in the amount of \$1,600.00.

Section 7(2) of the *Act* stipulates that when a landlord seeks compensation for a tenant's non-compliance with the *Act*, the landlord must do whatever is reasonable to minimize the damage. As the Landlord is making a claim for compensation, the burden of proving that she made reasonable attempts to mitigate her losses rests with the Landlord.

I find that the Landlord has submitted insufficient evidence to show that she made reasonable efforts to update her internet advertisements. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates her testimony that the advertisements were frequently updated or that refutes the Tenant's testimony that they were not frequently updated. As the Landlord has not established that she frequently updated her internet advertisements, I find that the Landlord has failed to establish that she made reasonable efforts to mitigate the lost revenue she experienced after January of 2014. As the Landlord has not established that she made reasonable efforts to mitigate the lost revenue she experienced after January of 2014, I dismiss her claim for compensation for any period after that time.

In determining this matter, I have placed no weight on the Tenant's submission that the Landlord verbally agreed that the Tenant could end the fixed term tenancy prematurely. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's testimony that there was a verbal agreement or that refutes the Landlord's testimony that they did not have a verbal agreement. In the absence of conclusive evidence of a verbal agreement, I find that the written tenancy agreement is the most reliable evidence.

In determining this matter, I have placed no weight on the undisputed evidence that the Tenant offered to help find a new occupant but she did not assist the Landlord in this regard. While a tenant has the right to assist in locating a new occupant, a tenant is not obligated to do so. I therefore find this matter irrelevant to my decision.

In determining this matter, I have placed no weight on the term of the tenancy agreement that allows the Tenant to prematurely end the tenancy if they pay two month's rent. As the parties agree that the agreement is contingent on the rent being paid prior to the before the rental unit is vacated, and the payment was not made before the rental unit was vacated, I find this term has no force or effect.

Section 32 of the *Act* requires a tenant to repairs damage to the rental unit that is caused by the action or neglect of the tenant.

I find that the Landlord has failed to establish that the carpet was not damaged at the start of the tenancy. In reaching this conclusion I was heavily influenced by the fact that

a condition inspection report was not completed at the start of the tenancy and by the testimony of the Tenant, who stated that the hole was barely noticeable. I was further influenced by the absence of a photograph of the damage, which would have provided me with an opportunity to assess whether the damage could have been overlooked at the start of the tenancy. As the Landlord has failed to establish that the hole was not present at the start of the tenancy, I am unable to conclude that it was damaged during the tenancy. I therefore dismiss the Landlord's claim for this repair.

I find that the Landlord has failed to establish that the patio door did not slide properly or that the shower control did not work properly at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's testimony that these items were damaged during the tenancy or that refutes the Tenant's testimony that they were not damaged during the tenancy. As the Landlord has failed to establish that the items were damaged during the tenancy, I dismiss the Landlord's claim for these repairs.

I find that the Landlord has failed to establish that the fridge was not damaged at the start of the tenancy. In reaching this conclusion I was heavily influenced by the fact that a condition inspection report was not completed at the start of the tenancy; by the absence of evidence that corroborates the Landlord's testimony that it was damaged during the tenancy; and by the testimony of the Tenant, who stated that the damage was present at the start of the tenancy. As the Landlord has failed to establish that the fridge was not damaged at the start of the tenancy, I am unable to conclude that it was damaged during the tenancy. I therefore dismiss the Landlord's claim for this repair.

I find that the Landlord has failed to establish that the blinds were not damaged at the start of the tenancy. In reaching this conclusion I was heavily influenced by the fact that a condition inspection report was not completed at the start of the tenancy; by the absence of evidence that corroborates the Landlord's testimony that it was damaged during the tenancy; and by the testimony of the Tenant, who stated that she does not recall damaging the blinds. As the Landlord has failed to establish that the blinds were not damaged at the start of the tenancy, I am unable to conclude that they were damaged during the tenancy. I therefore dismiss the Landlord's claim for this repair.

Section 37(2) of the *Act* requires a tenant to leave a rental unit reasonably clean. I find that the Landlord has failed to establish that the patio was not left in reasonably clean condition at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's testimony that the patio required cleaning or that refutes the Tenant's testimony that it was clean at the end of the tenancy. As the Landlord has failed to establish that the patio needed cleaning, I dismiss the Landlord's claim for cleaning the patio.

On the basis of the undisputed evidence, I find that when this tenancy ended the Tenant took a lock that belonged to the Landlord. In addition to establishing that a landlord suffered a loss, a landlord must also accurately establish the cost of the loss whenever compensation is being sought. In these circumstances, I find that the Landlord failed to

establish the true cost of replacing the lock. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence, such as a receipt, that corroborates the Landlord's claim that it cost \$20.00 to replace the lock. I do, however, award nominal damages in the amount of \$5.00, which serves to acknowledge the loss.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

### Conclusion

The Landlord has established a monetary claim, in the amount of \$1,705.00, which is comprised of \$1,600.00 in lost revenue, \$5.00 in nominal damages, unpaid rent and \$100.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the landlord to retain the Tenant's security deposit of \$800.00, in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$905.00. 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: September 10, 2014

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Residential Tenancy Branch



