



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, OPR, MNR, MNDC, FF

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for authority to retain the tenant's security deposit, an order of possession for the rental unit due to unpaid rent, a monetary order for money owed or compensation for damage or loss and alleged unpaid rent, and for recovery of the filing fee paid for this application.

The landlord, the tenant, and the tenant's agent attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and no party raised any issue regarding service of the evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary matter*-Although the landlord applied for an order of possession for the rental unit, the tenant vacated the rental unit in mid-July 2014; as a result, I have excluded that portion of the landlord's application from further consideration.

Issue(s) to be Decided

Is the landlord entitled to retain the tenant's security deposit, further monetary compensation, and for recovery of the filing fee paid for this application?

Background and Evidence

The landlord stated that this tenancy began on November 1, 2012, ended on July 8, 2014, monthly rent was \$1675, and the tenant paid a security deposit of half the monthly rent. The written tenancy agreement, however, shows that the security deposit was \$875.

The tenant submitted that she vacated the rental unit on July 15, 2014.

In support of his application, the landlord submitted that as he was selling the rental home, he informed the tenant of such. The landlord submitted further that although he considered serving the tenant a 2 Month Notice to End Tenancy for Landlord's Use of the Property, he did not do so upon advice received from a landlord's organization, since he was not evicting the tenant.

The landlord submitted that the tenant failed to pay rent for July and that as he received insufficient notice from the tenant that she was vacating the rental unit, he is entitled to a loss of rent revenue for August 2014.

The landlord confirmed that he did not seek to find a new tenant for the month of August as he was selling the residential property.

The landlord's monetary claim is \$3350, comprised of unpaid rent of \$1675 for July and loss of rent revenue of \$1675, for August 2014.

*Tenant's response-*

The tenant, through her agent, submitted that the tenant acted in good faith when the tenant vacated, as the landlord called the tenant and advised she had to move out.

According to the tenant's agent, the landlord agreed on June 2 that the tenant would not have to pay rent for July if she moved out.

The tenant submitted that the landlord showed up unannounced at her daycare business, which was at the rental unit, yelling and waving papers at her, in front of the parents and children.

The tenant submitted further that the landlord never returned their phone calls and that the parties had originally agreed that the tenancy would be for a 5 year fixed term.

The tenant's relevant documentary evidence included was a copy of the written tenancy agreement, which shows that the tenancy was to run from year to year.

### Analysis

Section 51 of the Act provides as follows:

*(1) A tenant who receives a notice to end tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

In this case, the landlord did not serve or issue such a 2 Month Notice to the tenant; rather, the evidence shows the landlord informed the tenant that he was selling the property.

While it may very well be that the landlord informed the tenant she had to move, under the Residential Tenancy Act a tenant cannot be compelled to vacate a rental unit at the verbal request of the landlord. The tenant, therefore, had the choice to stay and wait for the 2 Month Notice as the tenancy continues until it may legally end under the Act or the tenancy agreement. Instead the tenant secured alternate accommodations and vacated, without paying rent for the final month of the tenancy.

As the tenant was not issued a 2 Month Notice, under section 49 of the Act, I find she was not entitled to any compensation, in this case, rent for the month of July 2014, as claimed by the tenant.

I therefore find the tenant was obligated to pay the rent due for July 2014, under the terms of the tenancy agreement, and failed to do so. Due to this, I find the landlord is entitled to a monetary award of \$1675 for unpaid rent for July 2014.

As to the landlord's claim for loss of rent revenue for the month of August, as the landlord confirmed that he did not attempt to find another tenant for August, I find that

he failed to prove that he took reasonable steps to minimize his loss for that month, as he is required to do under section 7(2) of the Act. I therefore dismiss his claim for loss of rent revenue for August in the amount of \$1675.

I award the landlord recovery of the filing fee paid for this application of \$50.

Due to the above, I find the landlord is entitled to a total monetary award of \$1725, comprised of unpaid rent of \$1675 for July 2014 and for recovery of the filing fee paid for this application of \$50.

### Conclusion

The landlord's application for monetary compensation is granted in part.

At the landlord's request, I direct him to retain the tenant's security deposit of \$875 in partial satisfaction of his monetary award of \$1725 and I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$850, which is enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

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* and is being mailed to both the applicant and the respondent.

Dated: September 19, 2014

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Residential Tenancy Branch

