



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

MND, MNDC, MNSD, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for loss of revenue caused by the tenant's termination of the tenancy prior to end of the fixed term.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### **Issue(s) to be Decided**

Is the landlord entitled to monetary compensation for loss of revenue?

### **Background and Evidence**

The landlord testified that the one-year fixed term tenancy began on September 1, 2013 and was supposed to end on August 31, 2014. The current rent was \$1,350.00. A security deposit of \$675.00 was paid at the start of the tenancy.

Submitted into evidence was a copy of the tenant's Notice to End Tenancy with the tenant's and the landlord's signatures on the bottom, a copy of the fixed-term tenancy agreement, copies of the move-in and move-out condition inspection reports and copies of communications.

The parties testified that on March 30, 2014 the tenant gave two months written notice to move effective May 31, 2014. A copy of the tenant's Notice dated March 31, 2014 is in evidence. The tenant pointed out that the landlord signed the tenant's written Notice at the bottom of the paper. According to the tenant, this signature confirms that the two

parties made a mutual agreement to terminate the tenancy before the end of the fixed term.

The landlord disputed the tenant's testimony and stated that she merely signed the letter acknowledging that she received the tenant's written notice to vacate. The landlord stated that there was no mutual agreement to end the tenancy and no intent on the landlord's part to free the tenant from liability for ending the contract before the fixed term expired on August 31, 2014. The landlord testified that she did her best to market the unit to find a new tenant before May 31, 2014.

Both parties testified that, as soon as the tenant gave notice to move out, the landlord immediately commenced advertising the unit and seeking a replacement renter in order not to suffer a loss of rent and started to show the unit to prospective tenants.

The landlord testified that a new tenant was finally found to move in, but not until June 15, 2014 and the landlord had to lower the rental rate by \$25.00 per month to ensure that the unit was occupied. . The landlord is claiming \$675.00 for one half a month loss of rent, \$62.50 for the rent difference over the 2 ½ month period and \$65.00 costs previously agreed upon by the tenant.

The tenant argued that they provided generous notice to vacate and even surrendered the unit earlier than their Notice stated to allow the landlord to market the unit. The tenant stated that they had no choice but to relocate closer to their son's school. The tenant maintains that there was a mutual agreement to terminate the fixed term tenancy early. The tenant pointed out that the landlord did not notify them that the landlord would be seeking compensation until near the end of May 2014.

### **Analysis**

In regard to an Applicant's right to claim damages from another party, section 7 of the Act provides that, if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants the Arbitrator authority to determine the amount and to order payment under these circumstances.

In a claim for damage or loss under the Act, the party making the monetary claim bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

#### **Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,

2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

Based on the evidence, I find that the landlord and tenant entered into a one-year fixed term tenancy that was to expire on August 31, 2014. I find that the tenant served the landlord with a written notice to end the tenancy and apparently believed that, by having the landlord sign the tenant's notice, it would transform the document into a mutual agreement to end the tenancy, rendering the tenant free of all liabilities associated with ending the fixed term.

However, I find that to be a valid contract, all of the pertinent contract terms must be in writing and clearly understood. A valid contract requires that there be a meeting of the minds between the two parties. I find that, in this case, while the tenant believed that the landlord consented to ending the tenancy early with no risk of financial liability for the tenant, the landlord's intent was merely to acknowledge receipt of the tenant's Notice to End the tenancy.

In reviewing this document, I find that there are no stated terms that make this a mutual agreement and no mention that, by signing the Notice, the landlord is consents to release the tenant from all of the obligations they agreed to in the original tenancy agreement. I find that the document that the tenant is relying on as a mutual agreement to end the tenancy, is only a Notice from the tenant stating that they are giving the landlord "*a notice period of 2 months to end our tenancy*".

I find that ending the fixed term before the expiry date violated the Act and the tenancy agreement and the landlord suffered a loss as a result.

Section 45(2) of the Act provides that:

*"A tenant may end a fixed term 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 is payable under the tenancy agreement.”*

I find that the landlord fulfilled their obligation under section 7(2) of the Act, to mitigate the loss by re-renting the unit as quickly as possible, even reducing the rent to find a new tenant. In this regard the landlord avoided further losses.

Therefore, I find that the landlord's claims have met all elements of the test for damages and the landlord is entitled to total compensation of \$825.50, comprised of \$675.00 for loss of rent from June 1 to June 15, 2014, \$12.50 for the reduction of rental rate for the latter half of June, \$25.00 less rent collected for July, \$25.00 less rent for August, \$65.00 deduction from the security deposit agreed upon by the tenant and the \$50.00 cost of filing the application.

I order that the landlord retain the tenant's security deposit of \$675.00 in partial satisfaction of the claim leaving a balance due of \$177.50.

I hereby grant the Landlord a monetary order under section 67 for \$177.50. This order must be served on the Respondent and may be filed in B.C. Provincial Court (Small Claims) and enforced as an order of that Court.

### **Conclusion**

The landlord is successful in the application and is granted a monetary order against the tenant for loss of revenue.

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: October 06, 2014

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Residential Tenancy Branch

