



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNDC, MNR, MND, 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 unpaid rent; for a monetary Order for damage; and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on May 07, 2014 the Application for Dispute Resolution and Notice of Hearing were delivered to the school that the Landlords' children attend. The Tenant acknowledged receipt of these documents. As the documents were received by the Tenant, I find that they have been sufficiently served pursuant to section 71(2)(c) of the *Residential Tenancy Act (Act)*.

The Landlord stated that on May 06, 2014 she submitted a letter outlining her claim, dated May 06, 2014, and two receipts to the Residential Tenancy Branch, which I have in my possession. She stated that these documents were served to the Tenant with the Application for Dispute Resolution on May 07, 2014. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings, pursuant to section 71(2)(c) of the *Act*.

The Landlord stated that on May 06, 2014 she also submitted 4 photographs and 3 pages of internet advertisements to the Residential Tenancy Branch, which I do not have in my possession. She stated that these documents/photographs were served to the Tenant with the Application for Dispute Resolution on May 07, 2014. The Tenant acknowledged receipt of these documents. I note that it is not impossible for documents to be misfiled by the Residential Tenancy Branch and I can find no reason to conclude that the Landlord did not submit these documents, given that she served them to the Tenant.

The Landlord agreed to proceed with the hearing at this point, with the understanding that an adjournment would be considered if the parties could not agree on the contents of the photographs/internet advertisements. During the hearing the content of the

internet advertisements was discussed. The Landlord stated that she does not have those documents with her, as she is out of town, so she cannot recall the precise information on the documents. As these documents appear to be relevant to the Landlord's claim, I concluded it was appropriate to adjourn the hearing to provide the Landlord with an opportunity to re-submit these three pages and the four missing photographs. In my view, proceeding with the hearing when the Landlord cannot fully rely on the evidence she submitted is unfair to the Landlord. During the hearing the Landlord was directed to resubmit the missing documents to the Residential Tenancy Branch.

On August 20, 2014 the Tenant submitted numerous documents/photographs to the Residential Tenancy Branch. The Tenant contends that these documents were mailed to the Landlord, via regular mail, on August 20, 2014. The Landlord stated that she has not received this mail, as she left the country on August 20, 2014, and she does not expect to return until December of 2014 or January of 2015. I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the *Act*.

The Landlord again agreed to proceed with the hearing at this point, with the understanding that an adjournment would be considered if the parties could not agree on the contents of the documents submitted in evidence by the Tenant. During the hearing the content of internet advertisements that were submitted by the Tenant was discussed. This placed the Landlord at a significant disadvantage, as she was unable to view the advertisements and she stated that she could not recall the precise information in the advertisements. This supported my conclusion that proceeding with the hearing would be unfair to the Landlord, given that she cannot view those documents.

Residential Tenancy Branch Rules of Procedure require a Respondent to serve evidence to an Applicant as soon as possible and at least five days before the dispute resolution proceeding. Although the Tenant's evidence was served at least five days before the proceeding, I am not satisfied it was served as soon as possible, given that they were aware of the proceeding in May of 2014. As the delay in serving the evidence contributed to the need for this adjournment, I do not find that an adjournment is unfair to the Tenant.

At the reconvened hearing the Landlord stated that she did not understand that she had been directed to resubmit the 4 photographs and 3 pages of internet advertisements to the Residential Tenancy Branch, which she had been advised were not in my possession. As these documents were not resubmitted to the Residential Tenancy Branch and they are not in my possession, I am unable to consider those documents when rendering this decision. As the Landlord did not act on the opportunity to resubmit these documents, which is one of the reasons why the original hearing was adjourned, I find it reasonable to proceed with this hearing in the absence of those documents.

At the reconvened hearing the Landlord stated that she returned to Canada in early December and she did not locate the evidence package that the Tenant allegedly

mailed to her in August of 2014. She stated that her home was rented to a third party during her absence and it is possible they did not pass this package on to her. As the Landlord has not received the Tenant's evidence package I have not relied on the physical documents as evidence, although the Tenant was provided with the opportunity to orally introduce any relevant documents.

On December 05, 2014 the Tenant submitted additional documents to the Residential Tenancy Branch. The Tenant contends that these documents were mailed to the Landlord on December 10, 2014 and were emailed to her on January 12, 2014. The Landlord stated that she did not receive the documents that were mailed to her but she did receive the emailed documents. As the documents were submitted well after the proceedings commenced and the Landlord only received the documents one day before the reconvened hearing, I do not accept these documents as evidence. I find that the delay in serving the documents places the Landlord at a disadvantage.

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

#### Issue(s) to be Decided

Is the Landlord entitled to compensation for lost revenue and damage to the rental unit?

#### Background and Evidence presented on September 03, 2014:

The Landlord and the Tenant agree that this tenancy began on July 15, 2013 and that it was a fixed term tenancy. The parties agree that the fixed term on their written tenancy agreement ended on July 14, 2014. The parties agree that the Tenant was required to pay monthly rent of \$2,850.00 by the first day of each month.

The Landlord and the Tenant agree that this tenancy was the subject of a previous dispute resolution proceeding on February 17, 2014, in which the parties reached a settlement agreement. In that hearing the parties mutually agreed that the tenancy would end on April 30, 2014 unless a new occupant could be found prior to that date.

The Landlord and the Tenant agree that the Tenant vacated the rental unit on February 28, 2014 and that they provided written notice of their intent to vacate on that date. The Tenant contends this written notice was left in the rental unit at the end of the tenancy and was also mailed to the Landlord on February 28, 2014. The Landlord thinks she received this written notice directly from the female Tenant but she cannot recall when she received this written notice.

The Landlord and the Tenant agree that no rent was paid for March or April of 2014 and that a forwarding address has not been provided to the Landlord in writing. I note that

legal counsel provided his mailing address during the hearing for the purposes of being mailed a notice of reconvened hearing.

The Landlord and the Tenant agree that the Tenant paid a security deposit of \$2,850.00. The parties agree that during a previous dispute resolution proceeding it was determined that there had been security deposit overpayment of \$1,425.00, which would be applied to the next month's rent. The Landlord stated that she applied the security deposit overpayment of \$1,425.00 to rent for March of 2014; that she applied the remaining security deposit of \$1,425.00 to the rent for March, although she did not receive written authority to do so, and that she believes rent has been fully paid for March of 2014.

Background and Evidence presented on January 13, 2015:

The Landlord and the Tenant agree that a forwarding address, in writing, has still not been provided to the Landlord.

The Landlord is seeking compensation for lost revenue from April of 2014, in the amount of \$2,850.00.

The Tenant contends they ended the tenancy prematurely because they observed mice on December 26, 2014, which they reported to the Landlord on January 01, 2014. The Tenant contends that the Landlord did not respond to their reports of mice so they reported the problem again on February 25, 2014.

The Landlord stated that

- a problem with rodents was reported to her sometime in January of 2014
- that she set traps and was able to catch a rat
- that the Tenants were avoiding her at this point so she did not inform them she had set traps or that she had caught a rat
- that the problem was not reported to her again.

The Landlord stated that she advertised the rental unit on two popular websites. She stated that she advertised the rental unit on February 01, 2014 and that she updated those advertisements on a regular basis.

The Tenant contends that one of the advertisements which the Tenant viewed on March 05, 2014 indicated that the rental unit was available for rent on April 01, 2014. The Landlord stated that she cannot recall if all of the advertisements she placed in March indicated that the rental unit was not available for rent until April 01, 2014, although she believes it is possible as she does not like begin tenancies mid-month. The Landlord stated that she was able to re-rent the unit for May 01, 2014, at a reduced rent of \$2,500.00.

The Landlord is seeking compensation for a damaged coffee table. The Landlord stated that:

- the glass top is attached to the table by a screw
- that the screw regularly comes loose and needs to be tightened
- that the Tenant was not advised of the need to regularly tighten the screw, as she assumed they would recognize the need as the screw loosened
- the glass table top was broken at the end of the tenancy.

The Tenant contends that they were not aware the table top was becoming loose and that the glass top fell off the table during the tenancy. The Tenant believes the table collapsed simply because it was old.

The Landlord is seeking compensation for a damaged kitchen soap dispenser. The Landlord stated that the dispenser appears to have been damaged when the Tenant unscrewed the dispenser from the bottom rather than simply filling the dispenser from the top. The Landlord acknowledged that she did not tell the Tenant how to fill the dispenser.

The Tenant contends that dispenser was damaged when it was unscrewed from the bottom in an attempt to fill it and that they were not informed there was an alternate method of filling the dispenser.

The Landlord is seeking compensation for replacing one rubber kitchen sink drain plug and one metal kitchen drain plug. She stated that these items were in the rental unit at the start of the tenancy and they were missing at the end of the tenancy. She that she noted on the condition inspection report that the "second" metal kitchen drain plug was missing at the start of the tenancy.

The Tenant contends that the drain plugs that were in the rental unit at the start of the tenancy were left in the unit at the end of the tenancy.

### Analysis

I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$2,850.00 by the first day of each month. I find that this fixed term tenancy that began on July 15, 2013, the fixed term of which was to end on July 14, 2014. I find that the parties subsequently agreed to change the end of the fixed term tenancy to April 30, 2014.

As the Landlord has not filed a claim for compensation for unpaid rent/lost revenue for March of 2014 or to retain the security deposit, I have made no determination on whether the Landlord is entitled to compensation for March or whether she has the right to retain the security deposit. **The Landlord remains obligated to comply with section 38 and 39 of the Act in regards to the security deposit if she receives a forwarding address from the Tenant, in writing.**

I find that the Tenant did not comply with section 45(2) of the *Act* when the Tenant ended this fixed term tenancy on a date that was earlier than the agreed upon end date of the fixed term tenancy, which was April 30, 2014. I find that the Landlord suffered lost revenue for the month of April as a result of the Tenant's breach of section 45(2) of the *Act* and that the Tenant must pay the Landlord \$2,850.00 in lost revenue for April of 2014.

I find that the Landlord made a reasonable effort to mitigate her losses and I therefore find that the Tenant must compensate the Landlord for lost revenue for the month of April, pursuant to section 67 of the *Act*. In reaching this conclusion I was influenced by the undisputed evidence that the Landlord began advertising the unit on the internet in February of 2014; that the Landlord regularly updated those advertisements; and that the Landlord reduced the rent by \$350.00 per month in an effort to locate a tenant.

While I accept that the Landlord limited her options by deciding not to advertise that the rental unit was available for rent on March 15, 2014, I do not find that this was a fatal flaw. I find that her decision to reduce the rent was a significant mitigating factor which more than compensates for the advertised start date. In reaching this decision I was influenced by my understanding that the vast majority of tenancies begin on the first day of each month. In my view the advertised start date would not, therefore, have had a limited impact on the Landlord's loss.

In determining that the Tenant breached section 45(2) of the *Act*, I note that I placed no weight on the undisputed evidence that there were rodent(s) observed in the rental unit during the latter part of this tenancy. While tenants can, in some circumstances, end a tenancy prematurely as a result of rodents, in accordance with section 45(3) of the *Act*, that can only occur after a tenant provides the landlord with written notice of the problem. As the Landlord was not provided with written notice of a problem with rodents, the Tenant was not entitled to end the tenancy prematurely.

On the basis of the undisputed evidence, I find that the glass on the coffee table in the rental unit was damaged when the screw securing the glass to the table became loose. As the Landlord was aware that this screw periodically loosened, I find that she should have informed the Tenant of the need to periodically tighten the screw. In the absence of this direction, I cannot conclude that the table was damaged as the result of neglect.

Section 32 of the *Act* requires a tenant to repair damage to the rental unit that is caused by the actions or neglect of the tenant or a guest of the tenant. As I have determined that the table was not damaged by neglect and there is no evidence to suggest that the table was damaged as a result of the actions of the Tenant, I find that the Tenant is not obligated to repair the table. I therefore dismiss the claim to repair the table.

On the basis of the undisputed evidence, I find that the soap dispenser was damaged during the tenancy. I find that the Tenant was acting reasonably when they unscrewed the dispenser in an attempt to fill it, given that they had not been informed there was an

alternate method of filling the dispenser. I therefore cannot conclude that the dispenser was damaged as a result of neglect. As I have determined that the soap dispenser was not damaged by neglect or misuse, I find that the Tenant is not obligated to repair the dispenser. I therefore dismiss the claim to replace the dispenser.

There is a general legal principle that places the burden of proving that damage occurred on the person who is claiming compensation for damages, not on the person who is denying the damage. In these circumstances, the burden of proof rests with the Landlord and I find that the Landlord has submitted insufficient evidence to show that two drain plugs were missing at the end of the tenancy. In reaching this conclusion, I was strongly influenced by the absence of evidence that corroborates the Landlord's statement that the items were missing or that refutes the Tenant's evidence that they were left in the unit. On this basis, I dismiss the Landlord's application for replacing the drain plugs.

I find that the Landlord's application has merit, and I find 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 \$2,900.00, which is comprised of \$2,850.00 in lost revenue for April of 2014 and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Based on these determinations I grant the Landlord a monetary Order for the amount \$2,900.00. 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: January 14, 2015

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Residential Tenancy Branch

