



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDC MNSD FF

### **Introduction:**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for orders as follows:

- a) A monetary order pursuant to Section 67 for damages for breach of a lease; and
- b) To recover the security deposit.

### **SERVICE**

Both parties attended and the landlord confirmed he received the Application for Dispute Resolution by registered mail. I find that the documents were served according to section 89 of the Act.

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

Has the tenant proved on a balance of probabilities that the landlord breached a fixed term lease with her and that she suffered damages and loss as a result? If so, what is the amount of proven loss?

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. The parties submitted a substantial number of documents as evidence also. The undisputed evidence is that the tenant submitted an Application Form on October 4, 2014 to rent the premises in response to an advertisement. The advertisement said No pet and CREDIT AND REFERENCE REQUIRED. The completed Application has the box checked "No" in answer to the question, "Have you ever filed bankruptcy?" A witness said the tenant told the landlord her credit was not good and it was determined that if they were willing to go down on the price, the landlord would contact the tenant and meet next day to sign a lease. In the hearing, the wife of the landlord said that bad credit does not mean filing for bankruptcy which is a new level of financial debt and she did not mean this was acceptable in a tenancy. On the Application, the tenant said she had a pet dog but on the lease, it states the pet damage deposit is not applicable and is NIL.

The male landlord was admitted to hospital the next day October 5, 2014 with vertigo and was there 3 days so his wife met with the tenant the next day. The witness in her statement said his wife wanted to take a security deposit and then do a credit check but the tenant refused until the rental was finalized so the wife signed the lease (although her husband is the named landlord) and the tenant gave \$500 for a security deposit although the full amount required was \$1125. The wife alleges the tenant put undue pressure on them to get a signed lease as it was needed for school registration, she offered the option of faxing it to the school later as her signature was not the valid signature of the landlord but the tenant pleaded so she yielded and signed it. An email dated October 5, 2014 contains the signed tenancy agreement with the note the male landlord would send a new one after he is out of hospital if the tenant needs it.

The tenant wanted to add her sister's name on the lease but as of the male landlord's email on October 18, 2014, she never supplied the name for verification. The landlord said she told her she would not add the sister's name 'in case she gets evicted' and the tenant said she told the landlord it was better if she was the principal tenant and sublet to her sister. The parties argued that crossing off the 'sublet' portion in the lease meant that she could not sublet (Landlord's contention) or that this was done so she could sublet to her sister (tenant contention). On October 10, 2014, the tenant emailed the landlord to say she had a dog which we would like to bring to the unit; the landlord responded with a note to say an extra pet damage deposit would be required but the tenant responded on October 12, 2014 that she was not in the position to pay it now. The landlord was concerned about the tenant's ability to pay the rent and followed up on her references. Her employer denied she ever worked there and the second reference never called back. On October 19, 2014, the landlord sent an email to the tenant and pointed out that the Application had stated that any false information would be grounds for disapproval of the Application and termination of the lease with the owner. He pointed out that the declaration on bankruptcy had been false, his wife had been unable to confirm the employment information and the tenant did not provide more documents to support her Application as requested so the lease was terminated. The landlord returned the tenant's security deposit of \$500 on October 20, 2014. The tenant rented a townhouse in the same municipality for \$1194 per month but said it is too small for her sister also; her sister pays \$800 rent in central BC plus utilities and the tenant is unable to help her through her grief and financial difficulties because of the breach of the lease.

The tenant claims as follows:

\$500 security deposit – but now paid

\$453.81 for moving van – never moved in.

\$597.50 for new security deposit in complex

\$54.55 for address change  
\$100 gas for moving  
\$26,400 for breach of lease. (12 months x \$2200).

On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

### **Analysis**

The onus is on the tenant as applicant to prove on the balance of probabilities that the landlord breached a fixed term lease and that this caused damages to her. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Although the tenant alleges the landlord breached a fixed term lease contrary to section 44 of the *Act*, I find the weight of the evidence is that the signed lease was not a valid lease. I find it was based on a misrepresentation by the tenant regarding bankruptcy, it was not signed by the landlord but by his wife who is not a party to the lease agreement and valid reference checks were unable to be done as required by the advertisement. Although the tenant and her witness state that in oral discussions with the landlord's wife at the time, the tenant said she had 'bad credit', I concur with the wife when she said bankruptcy is a much more serious situation and 'bad credit' would not normally be interpreted to mean 'bankruptcy'. I find an alleged oral discussion does not supersede a falsely signed agreement. I find the wife also crossed out clause 9 in the agreement stating "The tenant may assign or sublet...". Each party had a different interpretation of what this meant but I prefer the plain English interpretation that the tenant was not to sublet without the landlord's permission. Although the advertisement clearly stated 'No pet', and the landlord stroked out the pet damage deposit on the lease, I find the tenant attempted by email to renegotiate the inclusion of a pet but never paid the security deposit in full and said she could not afford the pet damage deposit. I find the lease is rescinded as it was based on misrepresentation, signed by an individual who is not a party to the lease and the parties were never in agreement as to the terms of the lease.

Furthermore, I find even if the lease had been valid, there is insufficient evidence that the tenant incurred any loss. I find she re-rented in the same municipality so her

moving expenses applied to her new home and her new rent was considerably lower than what she had agreed to pay this landlord. Although she attempted to add in her sister's rent to losses incurred, I find her sister was never a party to the lease and, in fact, the landlord was unable to obtain sufficient information on the sister to qualify her as a potential tenant. I find insufficient evidence to support that the ending or rescission of the lease caused damages to the tenant and the amount of the damages.

For the reasons stated above, I dismiss the application of the tenant in its entirety.

**Conclusion:**

I dismiss the application of the tenant in its entirety without leave to reapply. No filing fee was involved.

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: March 03, 2015

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Residential Tenancy Branch

