



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MNR, MND, MNSD & MNDC

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing filed by the tenant was sufficiently served on the landlord by mailing, by registered mail to where the landlord resides. I find that the Application for Dispute Resolution/Notice of Hearing filled by the landlord was sufficiently served on the Tenant by mailing, by registered mail to where the tenant resides on January 16, 2015. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?
- c. Whether the landlord is entitled to a monetary order and if so how much?
- d. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- e. Whether the landlord is entitled to recover the cost of the filing fee?

### Background and Evidence

The parties entered into a 6 month fixed term written tenancy agreement that provided that the tenancy would start on November 1, 2014 and end on April 30, 2015. The tenancy agreement provided that the tenant(s) would pay rent of \$550 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$275 at the start of the tenancy.

Problems quickly arose between the landlord and the tenant. The landlord testified that the tenant was taking illegal drugs. On November 9, 2014 the police were called to deal with a dispute between the tenant and other occupants in the rental property.

On November 10, 2014 the landlord wrote to the tenant which contain a proposal about ending the tenancy. The letter states he was prepared to allow the tenant to stay until December 31, 2014 provided the tenant did not disturb others. The letter further states that "if you decide to move out immediately or on Nov 30<sup>th</sup>, 2014 I'm willing to accept less than 30 days notice to end the tenancy and agree that I will refund your damage deposit if there is no damage to the room or property."

The tenant responded with a letter dated November 12, 2014 which states the tenant is ending his tenancy contract early and without notice on any single day before 31.12.14. The letter also sets out a number of other terms.

The landlord responded with a letter dated November 12, 2014 acknowledging the tenant's notice to end tenancy by December 31, 2014 and that the tenant verbally stated he might end it before Nov. 30, 2014. The letter also sets out terms of conduct.

The agent for the tenant is his mother. She testified her son is suffering from mental illness. She arrived in Canada on November 15, 2014. After discussing the matter with her son it was determined that it would be best for the two of them to return to the

United Kingdom where he could receive treatment. The tenant and his mother flew out of Vancouver returning to the United Kingdom on November 19, 2014.

The agent testified the landlord was not present at the time they left. She testified that she left a Notice in writing in the mailbox dated November 19, 2014 that provided the landlord with the tenant's forwarding address in writing, requested the deposit be returned and stating the tenant was leaving for medical treatment in the U.K. and would not be returning. It also refers to the landlord's letter of November 10 and it purported to accept the landlord's proposal that if he left by November 30, 2014 the landlord would return the deposit and would not claim for loss of rent for December. The letter also referred to a friend who would contact the landlord and arrange for the removal of his personal belongings before November 30, 2014.

The landlord testified he was out of the country from November 18, 2014 to December 11, 2014. The landlord testified he left the operations of the rental property in the hands of his friend and part owner (Witness #1). The landlord testified he never received the letter dated November 19, 2014. Witness #1 also testified he never received this letter..

There was an exchange of communications between the parties at the end of November or early December regarding the removal of the tenant's belongings. Each side disputes the evidence of the other side. At any rate the tenant's belongings were removed on December 4, 2014 by a friend in the presence of Witness 1. The landlord alleges the friend who removed the tenant's belongings "stole" belongings that belong to the landlord. The agent for the tenant responded saying it was done under the supervision of Witness #1 who was the landlord's agent.

#### Tenant's Application:

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the

landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

### Analysis

The tenant paid a security deposit of \$275 at the start of the tenancy. I determined the tenancy ended on December 4, 2014 after all of the tenant's belongings were removed.

There is a dispute on the evidence between the parties as to when the tenant provided the landlord with his forwarding address in writing.

In *Faryna v. Chorny*, [1952] 2 D.L.R. 354, the B.C. Court of Appeal set out the following test for assessing credibility:

“The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carries conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. (page 357)”

I determined the evidence of the agent for the tenant is to be preferred to that of the landlord or the landlord's agent for the following reasons:

- Her evidence was straight forward, clear and harmony with the other evidence. I accept her testimony fact that the letter dated November 19, 2014 containing the landlord's forwarding address in writing was placed in the landlord's mailbox on November 19, 2014. The Act provides that it deemed received 3 days later. I further accept her testimony that she talked to Witness 1 at the end of November or early December and his conversation indicated he had received that letter.

- I found the evidence of the landlord prone to exaggeration. In any event the landed was not in the country at the relevant time.
- I did not find the evidence of the landlord's witness to be credible. At one stage he testified he was in the rental property on November 10 and did not return until November 28. Later, when it was to his advantage he changed this story testifying he was there on a daily basis. His testimony is not in accordance with the preponderance of evidence.

As a result I determined the tenant provided the landlord with his forwarding address in writing on November 19, 2014 by leaving it in the mailbox and the landlord's agent picked it up shortly thereafter. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing. At the hearing the agent for the tenant stated she was seeking an order for double the security deposit although the Application for Dispute Resolution only claims the return of the deposit. As a result I determined the tenant has established a claim against the landlord in the sum of \$550 ( $\$275 \times 2 = \$550$ ) for double the security deposit

#### Monetary Order and Cost of Filing fee

I determined the tenant has established a claim against the landlord in the sum of \$550 plus \$50 for the cost of the filing fee for a total of \$600.

#### Landlord's Application:

With respect to each of the landlord's claims I find as follows:

- a. The landlord seeks an order for loss of rent for December on the basis the tenant failed to give sufficient notice. The agent for the tenant submitted the landlord offered to return the security deposit and to forgive a claim for loss of rent if the tenant vacated the rental unit by evidence of his letter dated November 10, 2014. She testified the tenant accepted that offer in the letter of November 19, 2014. I

disagree. The landlord made an offer in the letter of November 10, 2014. However, the tenant did not accept that proposal and made a counter proposal in his letter of November 12, 2014. In doing so the previous offer of November 10, 2014 is void. On November 13, 2014 the landlord confirmed the tenant's proposal acknowledging receipt of the tenant's notice to end the tenancy by December 31, 2014 and stating that the tenant verbally mentioned that he might end the tenancy on November 30, 2014. The landlord did not reinstate the proposal contained in his letter of November 10, 2014 that he would not claim against the tenant for lost rent for December if the tenant vacated by November 30, 2014.

As a result I determined the tenant is liable to the landlord for the failure to give sufficient notice subject to the landlord's obligation to act reasonably to lessen the loss. I determined the landlord failed to act promptly to find another tenant. The landlord was out of the country and did not return until December 11. There was no evidence that the landlord advertised between November 19 and December 4. Witness #1 testified he placed an advertisement on Craigslist on December 4 after the tenant's belongings were removed but he failed to present evidence to confirm this. In the circumstances I determined it is reasonable that the landlord would lose one half of a month rent. As a result I determined the landlord is entitled to the sum of \$275 for loss of rent for the period December 1 to December 15. Had the landlord acted when notice was received I determined that it is likely the rental unit would have been rented by December 15, 2014. Accordingly, I determined the landlord is entitled to \$275 for one half of a month rent.

- b. I determined the landlord is entitled to \$80 for the cost of belongings that were taken by the tenant's friend when he moved the tenant's belongings. I do not accept the landlord's allegation that the goods were stolen. The landlord's agent was supervising the removal of the belongings. However, in the absence of

evidence for the tenant's friend I find the goods were inadvertently removed and the landlord is entitled to recover the cost of replacing them in the sum of \$98

- c. I determine the landlord is entitled to \$17 for the tenant's share of unpaid utility and internet. The agent for the tenant testified this was provision was added to the tenancy agreement and was not included in the copy that was given to her son. However, she failed to produce a copy of the tenancy agreement that was given to her son and as a result I determined she failed to prove this allegation.

In summary I determined the landlord has established a claim against the tenant in the sum of \$390 plus \$50 for the cost of the filing fee for a total of \$440.

#### Monetary Order and Cost of Filing fee

The tenant has established a claim against the landlord in the sum of \$600. The landlord has established a claim against the tenant in the sum of \$440. After setting off one claim against that of the other I ordered that the landlord pay to the tenant the sum of \$160. The landlord shall keep the balance of the security deposit.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: March 16, 2015

