



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MDSD & FF

### 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 was sufficiently served on the Tenant by mailing, by registered mail to where the tenant resides on February 18, 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 landlord is entitled to A Monetary Order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

### Background and Evidence

The parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on September 1, 2014 and end on August 31, 2015. The

rent is \$1800 per month payable on the first day of each month. The tenant paid a security deposit of \$900 at the start of the tenancy.

The tenant is a student. She and her daughter occupied the rental unit commencing the September 2014. However, after a visit to her home country at the end of December her daughter decided she did not wish to return to Vancouver.

On January 13, 2015 the tenant e-mailed the landlord advising that the landlord that her daughter had decided to remain in her home country, it was not affordable for her to stay in the rental unit and stating she was intending to find a cheaper rental unit. She followed that up with a written Tenant's Notice to Terminate the Tenancy which states that she would move out of the rental unit on or before the end of January 2015.

The tenant vacated the rental unit on January 31, 2015. Despite attempting to find other tenants the landlord was not able to rent the rental unit for February 2015.

#### Analysis - Monetary Order and Cost of Filing fee

Section 45(2) of the Residential Tenancy Act provides as follows:

##### **Tenant's notice**

- 45** (2) 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.

The tenant is responsible to pay the rent for the unexpired portion of the fixed term unless there has been a breach of a material term of the tenancy agreement or the landlord has failed to properly mitigate its loss. In this case there has not been a breach

of a material term. Further I find the landlord has sufficiently attempted to mitigate its loss but it was not able to find a rent for February and has lost rent for that month.

The tenant raised a number of points which I do not accept. In particular:

- The tenant is bound by the terms of the contract which she entered into and the explanation that she is unfamiliar with a one year lease contract is not a defense. The landlord is not obliged to explain the terms of the contract to the tenant.
- The tenant testified the landlord told her to tell other that she was a friend and not a tenant. I assume from this testimony that the landlord was concerned that she did not have the right to rent the rental unit because of strata bylaws. After the tenant vacated the rental unit the landlord checked with the strata corporation and it turns out that as she was an original owner she did have the right to rent it. In my view this is not a defense the tenant can raise to the landlord's claim. The tenant gave notice that she was vacating to find a less expensive rental unit. The landlord has not breached strata bylaws and the contract was not illegal.
- The tenant testified the landlord never told her of her intention to charge for February. The landlord does not have an obligation to do so.
- The tenant objected to the conduct of the landlord's agent. In my view based on the evidence presented at the hearing this is not a defense to the landlord's claim for loss of rent.

In summary I determined the landlord has established a claim against the tenant for loss of rent for February. I granted the landlord a monetary order in the sum of \$1800 plus the sum of \$50 in respect of the filing fee for a total of \$1850.

#### Security Deposit

**I determined the security deposit plus interest totals the sum of \$900. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$950.**

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: April 14, 2015

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Residential Tenancy Branch

