



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Mainstreet Equity Corp  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

**MND, MNDC, MNSD, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for loss of rent revenue, damage to the rental unit, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

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

### Preliminary Matters

The tenants present at the hearing confirmed receipt of the hearing documents and evidence supplied by the landlord.

The third co-tenant was not at the hearing. On December 17, 2014 the landlord served tenant A.K. to the address supplied by the other two co-tenants at the end of the tenancy.

The tenants present at the hearing testified that co-tenant A.K. did not give them an address; he moved out before they had and did not leave contact information.

Therefore, even though co-tenant A.K. was served to the forwarding address given at the end of the tenancy by the co-tenants I find that he did not receive that mail and that he has not been served with Notice of the hearing. The mail was sent to the address used by the other two co-tenants who have confirmed they do not know how to reach A.K.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$1,125.00 for loss of December 2014 rent revenue?

Is the landlord entitled to compensation in the sum of \$5.00 for lightbulbs?

May the landlord retain the \$562.50 security deposit?

Background and Evidence

The tenancy commenced on May 17, 2014 for a six month term ending November 30, 2014. Rent was \$1,125.00. A security deposit in the sum of \$562.50 was paid.

A copy of the tenancy agreement was supplied as evidence. Term 4 of the tenancy agreement included a box that could be checked if the term converted to month-to-month; it was not selected. The clause indicated that the tenancy would last “not less than 6 months.”

Clause 6 of the tenancy agreement included a text box in which was written “6 months lease.”

Clause 11 of the agreement required the tenants to give notice of termination in writing as required by the Act.

A copy of a “notice to vacate” was supplied as evidence. The form was dated October 31, 2014 and signed by the tenants on that date. The landlord signed the form on November 10, 2014; the date the landlord said notice was received.

The female tenant said that on October 31, 2014 she went to pay November 2014 rent and that she told the person at the landlord’s office they were leaving at the end of the term; November 30, 2014. The tenant was then told they had to complete the notice to vacate form. The landlords’ staff member then completed the unit address section of the form and gave it to the tenant. The different hand-writing was obvious on the form.

The tenant said that the landlord’s staff member told her that all three co-tenants had to sign the notice ending tenancy. The tenants said they had previously told the landlord they would leaving and could have submitted the form at the time rent was paid if they had not been told they all had to sign the notice. The tenant then took the form away to attempt to locate the third co-tenant. After unsuccessfully attempting to reach the third co-tenant the tenants submitted the notice to vacate on November 10, 2014.

The tenant described the person who told her she must obtain the three signatures and said it was a new employee. The landlord said he did not recognize who that person might have been. The landlord does not believe that any staff member would tell the tenants that all tenants must sign the notice to end tenancy. The landlord said that they

had signed another form that indicated the tenancy would convert to a month-to-month term. The tenancy agreement required the tenants to give notice in accordance with the Act and they failed to do so.

The tenants said they did not know they had to give notice to end the tenancy as from the start of the tenancy they had told the previous building manager, R. that they would leave at the end of the fixed term. The tenants had a positive relationship with that person, who knew they would be vacating once the term ended.

The landlord said they did not start advertising the unit until the end of November 2014 as they were not sure the tenants would vacate. They located a new tenant effective January 2015. The landlord is claiming loss of December 2014 rent revenue.

The parties agree that the tenants gave the forwarding address on November 30, 2014. The landlord applied claiming against the deposit on December 11, 2014.

The parties agreed that on November 30, 2014 the tenants agreed the landlord could retain \$5.00 from the deposit for light bulbs.

### Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act and proof that the party took all reasonable measures to mitigate their loss.

Section 13(2)(f) of the Act sets out terms required in a tenancy agreement:

*(f) the agreed terms in respect of the following:*

- (i) the date on which the tenancy starts;*
- (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;*
- (iii) if the tenancy is a fixed term tenancy,*
  - (A) the date the tenancy ends, and*
  - (B) whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date;*

The tenancy agreement provided the start date and set out a fixed term of six months. Clause four of the tenancy agreement failed to state whether the tenancy could continue as a periodic tenancy or for another fixed term after the end of the six month term or whether the tenants must vacate. The tenants accepted the agreement as a fixed term requiring vacant possession to the landlord at the end of the term.

I find, on the balance of probabilities that the tenants did tell the building manager they would vacate at the end of the term. The tenants' testimony was reliable and consistent and unrehearsed. The landlord was unable to provide evidence to the contrary; the previous building manager was not available to testify.

I find that when the tenants treated the tenancy as a fixed term ending on October 31, 2014 they were not required to give notice. The tenants had told the landlord they would vacate at the end of the term and accepted the term as ending the tenancy effective November 30, 2014. Clause four of the tenancy agreement was not fully completed and failed to set out a month-to-month term following the fixed term. As the tenancy agreement term is vague I find it must be interpreted in favour of the tenants.

The landlord has the burden of proving the claim and is relying on a document that fails to meet the requirement of the Act. A tenancy agreement must comply with section 13 of the Act and clearly set out what happens at the end of the fixed term. This tenancy agreement fails to do so. Clause 11 of the tenancy agreement would be applied if the term converted to a periodic tenancy, but the agreement does not do so.

Therefore, as this was a fixed term tenancy ending October 31, 2014 I find that the claim for loss of rent revenue is dismissed.

Of note, when making a claim for loss of revenue a landlord has the responsibility to mitigate the loss by advertising the unit as soon as possible. Delays in advertising do not contribute to mitigation of a claim.

As discussed during the hearing, all co-tenants are not required to sign a notice ending tenancy. When one co-tenant gives notice that notice is sufficient to end the tenancy for all co-tenants.

There was no dispute that the tenants had agreed to a \$5.00 deduction from the security deposit. Although not discussed during the hearing, the move-in/move out charge analysis document that forms part of the inspection report does not allow a tenant to clearly agree or disagree to specific deductions from a security deposit. The section of the inspection report where a tenant can agree to specific deductions was not completed.

Residential Tenancy Branch policy suggests that when a landlord applies to retain the deposit, any balance should be ordered returned to the tenant; I find this to be a reasonable stance.

Therefore, I find that the landlord may retain \$5.00 from the security deposit and that the tenants are entitled to return of the balance of the deposit in the sum of \$557.50.

As the parties agreed to the deduction of \$5.00 prior to the time this application was made I find that the application has no merit and decline filing fee costs to the landlord.

Based on these determinations I grant the tenants a monetary Order for the balance of the security deposit in the sum of \$557.50. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlords' claim for loss of revenue is dismissed.

The parties had previously agreed to a \$5.00 deduction from the security deposit; the landlord is entitled to this sum.

The tenants are entitled to return of the balance of the security deposit.

Filing fee costs are declined.

This decision is final and binding and 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: July 21, 2015

---

Residential Tenancy Branch

