



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Landlords' application: MNDC, MNSD, MNDC, FF

Tenants' application: MNSD, FF

### Introduction

This was a hearing with respect to applications by the landlord and by the tenants. The hearing was conducted by conference call. The landlord and the named tenant called in and participated in the hearing. The parties exchanged documentary evidence prior to the hearing. The landlord applied for a monetary award and an order to retain the tenants' security deposit. The tenants applied for the return of the deposit.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award as compensation for the breach of a fixed term tenancy agreement and if so, in what amount?

Is the landlord entitled to retain all or part of the security deposit?

Are the tenants entitled to the return of the security deposit?

### Background and Evidence

The rental unit is a house in Whistler. The tenancy began on September 1, 2014 for a one year term. The monthly rent was \$2,100.00, payable on the first of each month and the tenants paid a security deposit of \$1,050.00 on July 28, 2014.

The landlord provided written submissions and testimony at the hearing. She filed her application for dispute resolution on December 9, 2014 to claim for what she said were monetary losses incurred as a result of the tenants breaking the one year lease. The landlord said that the tenants gave the landlord notice on November 9, 2014 that they would move out on November 30, 2014. The landlord found new tenants to occupy the rental unit commencing December 1, 2014. The landlord did not lose any rental income.

The landlord claimed payment of the sum of \$2,733.57, said to be costs incurred and monetary losses, said to include advertising, gas and mileage as well as lost wages. The landlord complained that she had to cancel holiday plans and forego a vacation. The landlord also referred to claims for a weekend of travel and time spent checking out and doing a condition report for the tenants who were moving out and

also going over the lease and turning over the home to new tenants. The landlord stated the following monetary claim:

Advertising (name) magazine	Long term rental ad	\$22.00
Mileage charge Nov 14-16/14	54c/km x 316 km	\$172.26
Time spent on telephone interviews during work hours – tenants and references – cell phone only – 2.12 hours. Additional office landline 14 minutes documented	2.12 hours during office hours at \$200/hr (LL)  14 minutes additional office landline interviews	\$423  \$45.67
Time spent on telephone interviews in evenings – cell phone documentation	1.82 hours evenings and weekends at \$50/hr	\$90.83
Time reading and responding in writing to emails on Craigslist and (email address)	Reading and asking for references for work and previous tenancies for enquiries Nov 9 – 20 – 3 hrs at \$50/hr	\$150.00
Telus long distance charges to iPhone and from landline work and home	Phone calls were from Whistler, NY, California, Manitoba, Quebec etc Telus long distance cell phone charges at \$0.122/min x 236 min	\$28.80
Saturday Nov 15 <sup>th</sup> interviews and showings 10:30 am to 7 pm with ½ hour lunch break	8.5 hours at \$50/hr (LL)	\$425.00
Saturday Nov 15 <sup>th</sup> interviews – husband attending	8.5 hours at \$30/hr (LL's H)	\$255.00
Sunday Nov 16 <sup>th</sup> interviews, lease drawn up and reviewed, second showing to inquiries	2 hours at \$50/hr (LL) and 2 hours at \$30/hr (LL's H)	\$160.00
5 hours total travel time Vancouver to Whistler return Nov 14 – 16 <sup>th</sup> 2014 x 2 people	5 hours at \$50/hr (LL) and 5 hours at \$30/hr (LL's H)	\$400.00
Gas Nov 29 – 30 <sup>th</sup> 2014	Vancouver to Whistler return	\$46.00
Mileage charge Nov 29-30 <sup>th</sup> 2014	54c/km x 315 km	\$172.00

Time for condition inspection and checkout Nov 30 2014	1 hr at \$50/hr (LL) and 1 hr at 30/hr (LL's H)	\$80.00
Time to check in new tenants on November 30 <sup>th</sup> and do condition inspection again for new tenants	1 hr at \$50/hr (LL) and 1 hr at 30/hr (LL's H)	\$80.00
Photocopying fees for record production for tenants, copy for Residential Tenancy Branch and self		\$16.25
Further photocopying fees and copy paper charges after discussion with Residential Tenancy Office to include more working papers		\$50.00
Filing fees with Residential Tenancy Office		\$50.00
Canada Post charges for registered mail/parcel charges to Residential Tenancy Office and to tenants (names)		\$50.00
<b>TOTAL CHARGES</b>		<b>\$2733.57</b>

The landlord submitted that a property management service would have charged her a fee of \$5,670.00 to find new tenants. She said that a property management company would have charged her 30% of the total rent and she based her assessment of anticipated fees on that percentage of rent for the term of the tenancy agreement..

The tenants applied for the return of their security deposit. They said that after the tenancy began they were offered: "a more suitable and cost effective home to raise a family." The tenants complained that the wood burning fireplace did not meet their expectations as a heating system. The tenant said that she told the landlord that they were prepared to continue the tenancy for the month of December in the event that the property was not re-rented for the beginning of the month. The tenant testified that she received no indication from the landlord that she did not intend to return the deposit until the tenants were served with the landlord's application for dispute resolution.

The tenants submitted that the landlord's claim for \$2,733.57 for personal time to find new tenants was unreasonable. The tenant said that the landlord refused the tenants' offer of assistance. The tenants said that they did not object to claims for advertising, but her charges for her time and travel expenses were unwarranted and were part of her responsibility as a landlord to manage her own rental property.

### Analysis

The tenants' reasons for ending the tenancy do not amount to a valid defence to a claim for damages for breaching the fixed term tenancy. The tenants may have had sound reasons for making the decision to end the tenancy, but I do not find that they amount to a defence to a claim for damages for breach of the fixed term tenancy agreement.

The landlord's claim is based upon tenants' breach of the fixed term contract. The *Residential Tenancy Act* provides by section 7 (2) that:

A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

There is no provision in the tenancy agreement that entitles the landlord, as a contractual remedy, to compensation for her time spent performing her duties as a landlord. There is also no provision in the tenancy agreement that provides for a claim for liquidated damages for the administrative costs of re-renting in the event of a breach. The landlord has a statutory obligation to mitigate imposed by the quoted section of the *Act*. I find that the landlord is entitled to her reasonable out of pocket expenses incurred to re-rent the unit, but I find that the allowable expenses do not extend to the compensation of the landlord for her time spent performing her managerial duties as a landlord, particularly when she lives in a different geographic area from the rental property and seeks to claim for her time and travel expenses and that of her husband to travel to and from the rental property. It is also beyond the contemplation of the tenancy agreement that the landlord, who is employed in another occupation, apart from that of being a landlord, should seek to be compensated for time taken from her principal occupation to perform her duties as landlord.

I deny the landlord's claims for compensation for her time, and for her travel time and travel costs and for her husband's time. I allow the landlord's claim for:

- Advertising costs in the amount of: \$22.00
- Telephone charges in the amount of: \$28.80

The landlord is not entitled to recover costs associated with her application for dispute resolution, apart from the filing fee for her application; charges such as photocopying expenses and the costs incurred to serve documents by registered mail are not recoverable; the landlord's claims for photocopying and Canada Post charges are therefore denied, but the landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$100.80 and I order that the landlord retain the sum of \$100.80 from the security deposit that she holds.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

#### **RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION**

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or

- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of her monetary claim. Because the claim has been allowed in an amount less than the amount of the deposit, it is appropriate that I order the return of the balance of the tenants' security deposit; I so order and I grant the tenants a monetary order in the amount of \$949.20. I decline to award a filing fee to the tenants because their application was unnecessary and has not altered the outcome; the *Residential Tenancy Act* permits me to make an award to the tenants in these circumstances without the need for their application.

#### Conclusion

I have allowed the landlord's claim in the amount stated to be retained from the security deposit; all other claims by the landlord are dismissed without leave to reapply. I have granted the tenants a monetary order in the amount of \$949.20, being the balance of the deposit after deduction of the award in favour of the landlord. This order may be registered in the 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: August 10, 2015

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Residential Tenancy Branch

