



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing by conference call and gave affirmed testimony. The tenant confirmed receipt of the landlord's notice of hearing package and the submitted documentary evidence. The landlord has confirmed receipt of the tenant's submitted documentary evidence. As both parties have confirmed receipt of the notice of hearing package and the submitted documentary evidence provided by the other party, I am satisfied that both parties have been properly served as per sections 88 and 89 of the Act.

At the outset it was clarified with both parties that the landlord seeks a monetary claim for ½ of the monthly rent of \$837.50 as the landlord claims that the rental property was re-rented on May 19, 2015.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?  
Is the landlord entitled to retain all or part of the security deposit?

### Background and Evidence

This tenancy began on May 1, 2015 on a fixed term tenancy ending on May 1, 2016 as shown by the submitted copy of the signed tenancy agreement dated March 29, 2015. The monthly rent was \$1,675.00 payable on the 1<sup>st</sup> day of each month. Both parties confirmed that the tenant made a partial payment of \$100.00 towards the \$827.50 security deposit. No pet damage deposit was paid.

Both parties confirmed that the tenant gave written notice to end the tenancy on April 13, 2015 by email. The landlord stated that she immediately began advertising the rental property for rent for May 1, 2015, but was only successful in re-renting it for May 19, 2015. Both parties confirmed that the tenant gave the landlord a cheque for \$1,675.00 which consisted of \$837.50 for the security deposit and \$837.50 for the pet damage deposit. Both parties confirmed that the tenant "stopped payment" on the cheque.

The landlord seeks a monetary claim of \$837.50 which consists of the landlord's loss of rental income for May 1 to 19 (equal to approximately ½ of the monthly rent) as the landlord was able to mitigate any possible losses by re-renting the unit for May 19, 2015 to new tenants.

The tenant disputed the landlord's claims stating that she did not believe the landlord tried to mitigate any losses by re-renting the unit for May 1, 2015. The landlord stated that reasonable efforts were made to re-rent the unit for May 1, 2015.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

It is clear based upon the undisputed affirmed evidence of both parties that the tenant breached the tenancy agreement by ending it pre-maturely. After entering into a signed tenancy agreement dated March 29, 2015 to begin on May 1, 2015, the tenant gave undisputed affirmed testimony that she gave notice to end the tenancy in an email on April 13, 2015. However, the landlord's attempt at mitigating any possible losses is disputed by the tenant.

Policy Guideline #5, Duty to Minimize Loss states in part,

Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss<sup>1</sup>. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring...

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed. The arbitrator may require evidence such as receipts and estimates for repairs or advertising receipts to prove mitigation.

The landlord has provided direct testimony that upon being notified on April 13, 2015 the landlord immediately began efforts to re-rent the unit for May 1, 2015 by contacting all of the previous rental applicants and advertising the unit for rent. The tenant disputes this, stating that no documentary evidence was submitted in support of the landlord's submissions. The tenant disputed that the landlord made any reasonable efforts to re-rent the unit for May 1, 2015. The landlord stated that she had copies of emails exchanges with many prospective applicants, but failed to submit them in support of her application.

I find on a balance of probabilities that the landlord has failed to provide sufficient evidence of mitigation to re-rent the property. The landlord did not provide any details of her advertising efforts, any details of how many people she showed the rental unit to or how many people applied to become tenants. The landlord's application for a monetary claim is dismissed.

The landlord having been unsuccessful in her application is not entitled to recovery of the \$50.00 filing fee. I further order that as the landlord does not have a claim against the \$100.00 security deposit that the tenant is entitled to its' return. A monetary order for \$100.00 is awarded to the tenant.

Conclusion

The landlord's application is dismissed.

The tenant is granted a monetary order for \$100.00. This order must be served upon the landlord. Should the landlord fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court of British Columbia.

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: December 09, 2015

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Residential Tenancy Branch

