



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PLAN A REAL ESTATE SERVICES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MNSD

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent or utilities and for an Order permitting the landlord to keep all or part of the tenants' security and pet deposit.

The tenants, an advocate for the tenants and the landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenants confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord permitted to keep all or part of the security deposit?

### Background and Evidence

The parties agreed that this tenancy started on September 01, 2015 for a fixed term tenancy. On December 01, 2015 the parties entered into a new fixed term agreement which ended on February 29, 2016. Rent for this unit was \$1,650.00 per month due on

the 1<sup>st</sup> of each month. The tenants paid a security deposit of \$787.50 and a pet deposit of \$350.00 on July 31, 2015. The tenancy ended on January 31, 2016. Both parties attended a move in and a move out condition inspection of the unit and the tenants provided their forwarding address in writing at the move out inspection on January 31, 2016.

The landlord testified that in December, 2015 he approached the tenants and asked them when they wanted to move out. The tenants said they were moving out at the end of January, 2016. The landlord agreed he had sent the tenants an email and had stated in that email that their tenancy ended on January 31, 2016; however, this date was given in error and it should have been February 29, 2016 as this was the end of tenancy date provided on the tenancy agreement. The landlord testified that he corrected this error and sent a new email saying the end of tenancy date was February 29, 2016.

The landlord testified that the tenants said they had found a new place to live and were moving out anyways and they were informed they were breaking their lease. The landlord testified the tenants had been provided with a copy of the lease agreement at the start of the tenancy. The landlord testified that in that lease agreement it states that if the tenants break the lease they must pay liquidated damages of \$1,650.00 to the landlord. The landlord testified that they conducted multiple showings of the unit, they posted adverts for the unit and the unit was re-rented on February 01, 2016.

The landlord seeks an Order to be permitted to keep the security and pet deposits in partial satisfaction of his claim.

The tenants disputed the landlord's claim. The tenants testified that in December, 2015 the landlord sent the tenants an email saying that their lease was coming to an end and did they want to do a new tenancy lease for the unit. The tenants did not want to sign a new lease so they sent the landlord an email saying they would move out. It was the landlord who provided the tenants with the information that their lease ended at the end of January, 2016. The landlord did not send the tenants another email correcting this

date and did not provide the tenants with a copy of the tenancy agreement at the start of tenancy.

The tenants testified that from the information provided by the landlord they understood their tenancy ended on January 31, 2016 and therefore moved out accordingly. The tenants advocate testified that the landlord re-rented the unit for February 01, 2016 and therefore did not suffer a loss of rent for February. The tenants did not receive a second email from the landlord that stated their tenancy ended on February 29, 2016.

### Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

The tenancy agreement provided in documentary evidence has been signed by both parties and does state that the tenancy must end on February 29, 2016. The tenant's argued that they were never given a copy of the tenancy agreement at the start of their tenancy and relied on information from the landlord in the form of an email that the tenancy ended on January 31, 2016.

The landlord argues that the tenants were given a copy of the tenancy agreement and a corrected email saying the tenancy ended on February 29, 2016. In this matter the landlord has the burden of proof to show the a) he did provide a copy of the tenancy agreement to the tenants at the start of the tenancy and b) that he did send a corrected email showing he had put the wrong date on the first email and that in fact the tenancy ended on February 29, 2016 not January 31, 2016. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The landlord has provided in documentary evidence a copy of the tenancy agreement, the application to rent, a copy of one of the tenant's driving licence and an email from the tenants dated January 18, 2016 which states:

"After I was sent the email I was left with no choice but to find a new place to live. As you know vacancies are very low in Vancouver and first and foremost I need to have a place to live. You are in possession of the contract; therefore it is your responsibility to send me the correct information".

The landlord has not provided copies of his own emails that would show that he had corrected the information sent to the tenants regarding the end date of the tenancy and it appears from this email sent by the tenants that it was the landlord who had the copy of the lease agreement.

I must therefore conclude that the tenants relied on information sent by the landlord that their tenancy ended on January 31, 2016 and that as a result of this information they obtained a new place to live and vacated this rental unit on that date.

While I accept that there is a liquidated damages clause in the tenancy agreement I am not prepared to allow the landlord's claim to enforce this clause as the tenants acted in good faith based on the information they received from the landlord.

Consequently, the landlord's application to recover \$1,650.00 is dismissed.

The landlord's application to keep the security and pet deposit is also dismissed. I Order the landlord to return the security and pet deposit to a total amount of \$1,137.50.

### Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,137.50** pursuant to s. 67 of the *Act*. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: September 28, 2016

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Residential Tenancy Branch