



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**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, unpaid rent, to retain the security deposit, an order of possession and to recover the filing fee from the tenant 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 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 relevant evidence and testimony provided.

### Preliminary Matters

The landlord has possession of the rental unit; an order is not required.

The tenant confirmed receipt of evidence beyond the 12 pages the landlord supplied to the Residential Tenancy Branch (RTB); served via registered mail sent on April 4, 2016. That evidence was not before me. The landlord said that the evidence was supplied to the RTB. The landlord said that evidence included a copy of the tenancy agreement, monetary worksheet, utility invoices, and emails, notices issued to the tenant, the tenancy agreement and addendum. Some of those documents were included in a 12 page evidence submission given to the RTB on August 11, 2016. The hearing proceeded as the tenant had all evidence before him. The landlord was at liberty to make oral submission on any documents not before me.

The landlord confirmed receipt of the tenants' 14 pages of evidence served via priority shipping. The evidence was received on August 24, 2016. The landlord objected to the evidence, as it was not given at least seven days before the hearing. As the evidence was not given at least seven days prior to the hearing, which is required by the Rules of Procedure, the tenants' evidence was set aside. The tenant was at liberty to make oral submissions.

The landlord has claimed the cost of property management fees in the sum of \$400.00. The agent was informed that, outside of the filing fee, costs are not recoverable. An applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under section 67 of the Act. "Costs" incurred with respect to filing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under Section 72 of the Residential Tenancy Act. As a result, the portion of the claim for property management costs was denied.

#### Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$2,800.00 for loss of rent revenue?

Is the landlord entitled to compensation in the sum of \$60.70 for utilities?

May the landlord retain the security deposit?

#### Background and Evidence

There was no dispute that this fixed-term tenancy commenced on September 1, 2015. The term was to end on August 31, 2016 at which point the tenant would vacate. Rent was \$700.00 per month due on the first day of each month. The landlord is holding a security deposit in the sum of \$350.00. The tenant rented a room in a two bedroom unit; there was a roommate who rented the other bedroom. The landlord owns the 21 unit building.

The tenant agreed that utilities were to be shared and that he owes the landlord the sum claimed.

There was no dispute that on March 13, 2015 the tenant gave notice that he would vacate the rental unit on April 18, 2015. The landlord responded to the tenants' email informing the tenant that he could locate a sub-let, pay the landlord for the balance of the tenancy agreement to the end of the term or the landlord would proceed with a claim for loss.

On April 8, 2015 the landlord began to advertise the rental unit on two popular websites. Evidence of the ads and responses received were supplied as evidence. The landlord requested the same sum of rent and offered the same terms "with the potential for longer." The advertisements were renewed on June 21, 2016 with the same terms.

The landlord said that they had six responses but no one wanted to accept the rental.

I asked the landlord if they had reduced the rent sought, in an attempt to mitigate the loss. The landlord did not alter the rent sought.

The landlord has claimed the loss of \$700.00 rent revenue for May to August 2015, inclusive.

The tenant responded that earlier in the tenancy there was a flood and that the landlord did not properly respond or make any repairs. The absence of repairs made the rental unit unattractive to potential sublets. When asked, the tenant said that he did not place any concerns into writing for the landlord. The tenant said that he gave a lot of notice to the landlord and did his best to re-rent the unit. The tenant also said that he was not sure the agent was the person who could give him permission to sublet; that he had dealt with multiple people, such as the owner, a fraternity member and the agent.

The tenant acknowledged having received emails from the agent; providing options to minimize the potential loss of rent. The tenant said that the landlord did not make adequate efforts to rent the unit.

The landlord said three other occupants of this 21 unit building owned by the landlord that houses student tenants were able to sub-let their units around the same time.

### Analysis

RTB policy suggests that a party may apply for compensation to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When considering a claim for loss of rent revenue consideration is given to:

- whether a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- if the loss or damage has resulted from this non-compliance;
- if the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- if the party who suffered the damage or loss has acted reasonably to minimize that damage or loss

Where the landlord or tenant breaches a term of the tenancy agreement or Act the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This is set out in section 7 of the Act. 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.

Section 45(2) of the Act provides:

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

*(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.*

***(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.***

*(4) A notice to end a tenancy given under this section must comply with section 52 [form and content of notice to end tenancy].*

(Emphasis added)

The tenant confirmed that he did not provide the landlord any written request for repairs or suggest that the landlord had breached a material term of the tenancy agreement. Therefore, I find that when the tenant gave notice on March 13, 2016 to end the tenancy in April 2016 he breached section 45 of the Act. The tenant could only end the tenancy on the last day of the fixed term or, prior to the end of the term if he had adhered to section 45 of the Act.

The tenant was unsuccessful in his attempts to locate a sub-let and was given ample notice by the landlord to take steps to minimize the potential loss of rent revenue to the landlord. The tenant had a reasonable expectation to accept that the agent who gave him notice he could sub-let had the authority to provide that approval.

In relation to the efforts made by the landlord to locate a tenant for the balance of the tenancy I find that the efforts made were initially sufficient but that over time additional efforts could have been taken. The landlord utilized two web sites to advertise. There was no evidence before me that any efforts were made to expand the search for tenants or to reduce the rent sought, at least for the balance of the term, in an attempt to entice applicants.

Therefore, I find that the landlord is entitled to compensation in the sum of \$700.00 for each of May and June 2015. Advertisements placed with the same terms up to June 21, 2015 were not unreasonable. However, when the landlord renewed the ads on June 21, 2015 it would have been reasonable to adjust the rent in an attempt to mitigate the loss that resulted. The landlord could then have claimed the difference between the rent obtained and the amount the tenant was to pay. I find it would also have been reasonable to expand the search for tenants through the use of other avenues of advertising.

Therefore, I find that the landlord is entitled to compensation in the sum of \$1,400.00 for the loss of June and July 2015 rent revenue. In the absence of evidence that any steps were taken to minimize the loss after the landlord failed to attract potential renters up to June, 2015 I find that the balance of the claim is dismissed.

Based on the agreement of the tenant I find that the landlord is entitled to compensation in the sum of \$60.70 for utility costs claimed.

As the landlord's application has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$100.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$350.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary order in the sum of \$1,210.70. In the event that the tenant does not comply with this order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an order of that Court.

### Conclusion

The landlord is entitled to compensation in the sum of \$60.70 for utility costs and \$1,400.00 for loss of rent revenue.

The balance of the claim is dismissed.

The landlord is entitled to retain the tenant's security deposit.

The landlord is entitled to filing fee costs.

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: September 02, 2016

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Residential Tenancy Branch