



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REALTY EXECUTIVES ECO-WORLD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order permitting the landlord to keep all or part of the tenant's security and furniture deposit and to recover the filing fee from the tenant for the cost of this application.

The tenant, a translator for the tenant and an agent for the landlord attended the conference call hearing. The parties were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the landlord was permitted to provide additional evidence after the hearing had concluded. The tenant confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Is the landlord permitted to keep the security and furniture deposits?

### Background and Evidence

The parties agreed that this fixed term tenancy started on February 01, 2016 and was not due to end until January 31, 2017. The tenant moved from the rental unit on July 31, 2016. Rent for this unit was \$2,600.00 per month due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$1,300.00 and a furniture deposit of \$1,300.00 at the start of the tenancy. The parties attended the move in and the move out condition inspections of the rental unit at the start and end of the tenancy. The landlord testified that the tenant provided a forwarding address in writing on August 10, 2016 and this is the address the landlord used to serve hearing documents to the tenant. The tenant testified that he did not recall providing a forwarding address but thought his previous translator provided her address for service.

The landlord testified that the tenant broke his lease without proper notice and before the end of the fixed term. The tenant gave notice on July 28, 2016 and moved out two days later. Due to the short notice the landlord was unable to re-rent the unit for August 01, 2016. The landlord did however; place adverts on Craigslist straight away but the unit was not re-rented until October 01, 2016. The landlord has provided a copy of the new tenancy agreement in documentary evidence after the hearing concluded. This tenancy agreement was signed on September 22, 2016 for two tenants

The landlord seeks to recover a loss of rent for August, 2016 only and seeks an Order to keep the security and furniture deposits in satisfaction of August's rent. The landlord does not seek to recover a loss of rent for September, 2016; however, the landlord does seek to recover the filing fee of \$100.00 from the tenant.

The tenant testified that he did give notice to end the tenancy because the landlord failed to fix the washing machine after a few months and other things were also broken. The tenant disputed that the rental unit was not re-rented in August as the tenant contacted the landlord to see if he could go and pick up some things he had left at the unit and was told that he could not as there was someone living there.

The tenant therefore disputed the landlord's claim to keep the security and furniture deposits and seeks an Order to have them returned.

The landlord argued that no one would have told the tenant that someone was living in the unit in August, 2016 as it was not re-rented until October 01, 2016. The landlord also argued that she did replace the washer and dryer prior to the tenant giving his notice to end the tenancy.

### Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows and refer the parties to s.45(2) of the *Act* which states:

**45 (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.*

S. **45(3)** of the *Act* does allow a tenant to end a fixed term tenancy if the following applies:

**45 (3)** *If a landlord has failed to comply with a material term of the tenancy 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.*

The tenant testified that the landlord did not repair the washer or other repairs and so he moved out; however, the tenant has insufficient evidence to show what was wrong with the washer or that any other repairs were brought to the landlord's attention with a request to repair them within a reasonable time frame. Furthermore, there is insufficient evidence to show that the landlord's failure to make good on any repairs was a failure to comply with a material term of the tenancy agreement.

I am persuaded by the landlord's arguments that the tenant broke the terms of the tenancy agreement by ending the tenancy before the end of the fixed term and that the tenant only gave the landlord two days' notice that he was moving out. This prevented the landlord from finding new tenants for the first of August, 2016. I therefore find the landlord has established a claim to keep the security and furniture deposits to offset against the loss of rent for August, 2016 of \$2,600.00 pursuant to s. 38(4)(b) of the *Act*.

As the landlord's claim has merit I find the landlord is also entitled to recover the filing fee of **\$100.00** pursuant to s. 72(1) of the *Act*.

### Conclusion

I HEREBY FIND in favor of the landlord's claim to retain the deposits. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$100.00** for the filing fee. The Order must be served on the respondent. Should the respondent 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: February 08, 2017

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Residential Tenancy Branch