



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPN, MNR, MNSD, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (“the “Act”).

The Landlord filed an Application requesting an order of possession; to recover unpaid rent and /or utilities; and to recover the cost of the filing fee.

The Tenant filed an Application for the return of the security deposit and to recover the cost of the filing fee.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. The parties testified that they exchanged the documentary evidence before me. All participants in the hearing provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

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.

### Preliminary and Procedural Matters

The parties agreed to hear the Tenant’s Application for the return of the security deposit that was originally scheduled to be heard in July 2018.

The Landlord confirmed that the Tenants have moved out of the rental unit and that the Landlord is not seeking an order of possession for the rental unit.

The Landlord applied for dispute resolution on June 23, 2017. The Landlord's claim did not include a specific request to retain the security deposit; however, the details of the claim indicate clearly that the Landlord has kept the security deposit due to unpaid rent. I find that the Landlord clearly intended to apply to keep the security deposit due to unpaid rent and I amend the Landlords application to include the request to keep the security deposit in satisfaction of a loss of rent.

### Issues to be Decided

- Is the Landlord entitled to the monetary relief sought for unpaid rent?
- Can the Landlord keep the security deposit towards unpaid rent?
- Is the Tenant entitled to the return of double the security deposit?

### Background and Evidence

The Parties testified that the tenancy began on November 1, 2016, as a nine month fixed term tenancy to end on August 1, 2017. Rent in the amount of \$1,400.00 was due by the first day of each month. The Tenants paid the Landlords a security deposit of \$700.00. The Tenants moved out of the rental unit on June 1, 2017.

The Landlords testified that the Tenants moved out of the rental unit prior to the end of the fixed term tenancy. The Landlords testified that as a result of the Tenants moving out early, they suffered a loss of rent when they were unable to rent the unit out.

The Landlords testified that the Tenants have only paid \$700.00 towards June 2017, rent. They testified that the Tenants had agreed to pay the rent until the rental unit was rented or the term of tenancy expired.

The Landlords testified that they attempted to re-rent the unit by placing an advertisement on a local website in April and May of 2017. They testified that they kept the advertisement active into June and July of 2017. The Landlords testified that they initially advertised the unit for \$50.00 more rent than the Tenants were paying and that they received hundreds of inquiries. The Landlords provided documents showing that they had advertisements posted on a website to rent the unit.

The Landlord testified that they found new Tenants for the rental unit as of September 1, 2017, at \$1,400.00 per month. They Landlords are seeking compensation for a loss of half a month's rent for June 2017, and full rent for July 2017.

The Landlords are seeking a monetary order for a loss of rent in the amount of \$2,100.00.

In response, the Tenant submitted that it is unfortunate that the Landlord could not find a new Tenant. The Tenant submitted that the rental unit is in Vancouver where there is high demand for tenancies. The Tenant submitted that she does not feel that the Landlords made a comprehensive effort to locate new tenants.

### Tenants Application

The Tenant testified that she provided her forwarding address in writing to the Landlord on June 1, 2017. The Tenant did not provide a copy of the written notice she provided to the Landlord.

The Tenant testified that there was no agreement that the Landlord could retain any amount of the security deposit.

The Landlord testified that he received the Tenant's forwarding address in writing on June 19, 2017. The Landlord provided a copy of an email sent from the Tenants providing their forwarding address on June 19, 2017.

The Landlord applied for dispute resolution on June 23, 2017.

### Analysis

The Residential Tenancy Branch Policy Guideline #30 Fixed Term Tenancies states that:

*During the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties. For example, during the fixed term a landlord may end the tenancy if the tenant fails to pay the rent when due. A proper Notice to End Tenancy must be served on the tenant. During the fixed term a tenant may end the tenancy if the landlord has breached a material term of the tenancy agreement.*

The Residential Tenancy Branch Policy Guideline #3 Claims For Rent and Damages for Loss of Rent states:

*The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that*

*the tenant could legally have ended the tenancy. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy.*

*In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent.*

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

### Rent

I find that the Tenants ended the fixed term tenancy early by moving out of the rental unit on June 1, 2017. While I find that the tenancy ended, the Tenants are still responsible to pay the rent until the end of the fixed term tenancy, or until the Landlord finds a new Tenant.

I accept the Landlords evidence that they attempted to re-rent the unit. I find that the Landlord attempted to minimize the loss of rent, by advertising the rental unit at a reasonably economic rent.

In the circumstances, I find it reasonable to grant the Landlord compensation for a loss of rent for half of June 2017, and all of July 2017.

I grant the Landlord compensation in the amount of \$2,100.00.

### Security Deposit

I find that the Landlord applied for dispute resolution within 15 days of receiving the Tenants' forwarding address. Since the Landlord applied in time, the amount of the security deposit does not double as a penalty for not returning the deposit or filing a dispute within 15 days.

I authorize the Landlord to keep the security deposit in the amount of \$700.00 in partial satisfaction of the award of \$2,100.00 for the loss of rent.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was successful with their application, I order the Tenant to repay the \$100.00 fee that the Landlords paid to make application for dispute resolution.

After setting off the award of \$2,200.00 for rent and the filing fee, against the security deposit of \$700.00, I find that the Landlord is entitled to a monetary order in the amount of \$1,500.00. This order must be served on the Tenant and may be enforced in Provincial Court.

### Conclusion

The Tenants ended the fixed term tenancy early and the Landlord suffered a loss of rent.

I find that the Tenants owe the Landlord \$2,200.00 for the loss of June 2017, and July 2017, rent, and the filing fee.

The Landlord is granted a monetary order in the amount of \$1,500.00

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 29, 2017

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Residential Tenancy Branch