



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

MNRL-S, FFL

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent or utilities, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant, via registered mail, although she cannot recall the date of service. The Tenant acknowledged receipt of these documents and I there accept that they were served in accordance with section 89 of the *Residential Tenancy Act (Act)*.

On October 31, 2018 the Landlord submitted 8 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant, via registered mail, with the Application for Dispute Resolution. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On May 28, 2018 the Tenant submitted 3 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via email, on May 28, 2018. The Tenant cited the email address used to serve this evidence. The Landlord stated that she is no longer using that email address and that she did not receive the evidence sent to her by email.

Section 88 of the *Act* requires parties to serve evidence in one of the following ways:

- by leaving a copy with the person;
- if the person is a landlord, by leaving a copy with an agent of the landlord;
- by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- by leaving a copy at the person's residence with an adult who apparently resides with the person;
- by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- by transmitting a copy to a fax number provided as an address for service by the person to be served;
- as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*]; or
- by any other means of service prescribed in the regulations.

As the Tenant's evidence was not served in accordance with section 88 of the Act and the Landlord does not acknowledge receiving the Tenant's evidence, I cannot accept that evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

All of the documents accepted as evidence for these proceedings has been reviewed but is only referenced in this written decision if it is directly relevant to my decision.

#### Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent or utilities?

Is the Landlord entitled to retain the security deposit?

## Background and Evidence

The Landlord and the Tenant agree that:

- they entered into a fixed term tenancy agreement, the fixed term of which began on April 01, 2017 and ended on April 01, 2018;
- the Tenant was occupying the rental unit prior to the parties entering into this fixed term tenancy agreement;
- the tenancy agreement required the Tenant to pay monthly rent of \$1,800.00 by the first day of each month;
- the Tenant paid a security deposit of \$900.00;
- on September 30, 2017 the Tenant gave notice of her intent to vacate the rental unit, effective October 31, 2017;
- the Tenant vacated the rental unit on October 28, 2017; and
- the Tenant's forwarding address was written on the condition inspection report that was completed on October 28, 2017.

The Landlord is seeking compensation for lost revenue, in the amount of \$900.00, for the period between November 01, 2017 and November 15, 2017.

The Landlord stated that she advertised the rental unit on a popular website, beginning on October 01, 2017. She stated that the rental unit offered for rent, effective November 01, 2017, for monthly rent of \$2,050.00.

The Landlord stated that she re-rented the rental unit on November 15, 2017. She stated that the new occupant agreed to pay monthly rent of \$2,050.00 and that the new occupant paid \$1,025.00 in rent for November of 2017.

The Tenant argued that the Landlord only lost revenue of \$775.00 in rent for November of 2017, given that she collected \$1,025.00 in rent from the new occupant and would have only collected \$1,800.00 in rent for that month if the tenancy had continued.

The Tenant argued that the additional \$250.00 in rent the Landlord collected on a monthly basis from the new occupant would have, over time, compensated the Landlord for the lost revenue she experienced in November of 2017. The Landlord argued that this is not relevant to her claim for lost revenue.

The Tenant argued that the Landlord increased the rent by 13.9%. She argued that the Landlord may have been able to find a new tenant for November 01, 2017 if the rent had remained at \$1,800.00.

The Landlord stated that the market rent for her rental unit is approximately \$2,500.00. She stated that nobody expressed an interest in the unit for November 01, 2017,

although several people were interested the rental unit after November 01, 2017. She stated that several people were bidding on the rental unit.

### Analysis

On the basis of the undisputed evidence I find that the Tenant entered into a fixed term tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,800.00, and that the fixed term of this tenancy ended on April 01, 2018.

On the basis of the undisputed evidence I find that the Tenant did not comply with section 45(2) of the *Act* when she ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement.

On the basis of the undisputed evidence I find that the Landlord collected \$1,025.00 in rent from a new occupant for November of 2017. I therefore find that the Landlord experienced lost revenue of \$775.00 for November of 2017 as a result of this fixed term tenancy ending prematurely.

Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss. I find that the Landlord did not take reasonable steps to minimize the lost revenue she experienced in November of 2017.

I accept the Tenant's submission that the Landlord may have been able to find a new tenant for November 01, 2017 if the rental unit had been advertised for \$1,800.00 per month, rather than \$2,050.00. In reaching this conclusion I was influenced by the Landlord's testimony that \$2,050.00 is less than market rent for the unit and that she had people bidding on the unit. I therefore find it highly likely that the rental unit would have generated significantly greater interest if it had been advertised for \$1,800.00 and that the Landlord would likely have found a new tenant for November 01, 2018.

As the Landlord did not take reasonable steps to minimize the lost revenue she experienced in November of 2017, I dismiss her claim for compensation.

I note that the Landlord had every right to increase the rent after this tenancy ended. I find, however, that her decision to do so directly impacted her ability to seek compensation for lost revenue in these circumstances.

I find that the Landlord has failed to establish the merit of her Application for Dispute Resolution and I therefore dismiss her application to recover the cost of filing this Application for Dispute Resolution.

As the Landlord has failed to establish a right to keep any portion of the Tenant's security deposit, I find that the Landlord must return the Tenant's deposit of \$900.00.

### Conclusion

The Application for Dispute Resolution is dismissed.

I grant the Tenant a monetary Order for \$900.00. In the event the Landlord does not voluntarily refund the Tenant's security deposit, this Order may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced 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 *Act*.

Dated: June 06, 2018

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Residential Tenancy Branch