



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, MNRL-S, FFL

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein she sought monetary compensation from the Tenant for unpaid rent, money owed or compensation for damage or loss under the *Residential Tenancy Act*, the *Residential Tenancy Regulation* or the tenancy agreement, authority to retain the Tenant's security deposit and recovery of the filing fee.

The hearing was originally scheduled for 1:30 p.m. on September 28, 2018. As I was not satisfied that the Landlord had authority to act as a Landlord (being a tenant herself) I adjourned the matter and ordered the Landlord to submit an original copy of her tenancy agreement. On October 2, 2018 the Landlord submitted a copy of the original tenancy agreement confirming her authority to enter into sub-tenancies such that she has authority to act as a Landlord.

The hearing continued on November 13, 2018. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. What should happen with the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

### Background and Evidence

The Landlord confirmed that her original tenancy was a three year fixed term tenancy beginning November 1, 2016 ending October 31, 2019. A copy of this agreement was provided in evidence as per my Interim Decision of September 28, 2018 and pursuant to paragraph 9 of the agreement the Landlord was permitted to act as Landlord with any sub tenancies.

The Landlord stated that she entered into a sub tenancy with the Tenant on February 7, 2018 when he signed the subject tenancy agreement. The terms of the agreement were that he was to take possession of the rental unit as of February 15, 2018 for a 6.5 month term which was to end on August 31, 2018. The Tenant signed the agreement, and paid the Landlord a \$547.50 security deposit and a \$547.50 pet damage deposit. He also paid one half a month's rent for a total payment of \$1,642.50 which the Landlord continues to hold in trust.

The Landlord stated that the Tenant called the next day, on February 8, 2018, and stated that he had changed his mind and was no longer going to take the rental unit as he was moving in with a friend.

The Landlord stated that she re-rented the rental unit as of April 1, 2018. She testified that it takes longer to rent units in the community in which the rental unit is located, despite the fact there is a housing crisis in British Columbia. She stated that it is also hard to find the "right people" because some people aren't the "right fit"; such as those with dogs or spouses as the space is really only appropriate for one person.

The Landlord further stated that she had other people in line but when the Tenant paid the deposit she assumed it was a done deal. She stated that she took down her ads and ceased marketing the property. After he decided not to take the unit she called all the people who were in line but they had secured other accommodation.

The Landlord stated that as soon as the Tenant backed out of the deal she put her rental ads back up on a popular social media site. Copies of the ads were not provided in evidence. She stated that she was very motivated to get that space rented immediately because she was responsible for the full amount of rent and required the rental income from her sub-tenancies. She claimed that despite her efforts she could not re-rent until April 1, 2018.

The Landlord submitted that the Tenant signed a fixed term agreement such that he was responsible for the rent.

In response to the Landlord's claim the Tenant testified as follows.

The Tenant confirmed that he signed the agreement. He stated that when he first talked to the Landlord about the rental unit, it was already February 5, 2018 such that she was already likely to lose a month's rent. He stated that she told him that there was another person living there who was a yoga instructor, however, when he came to see the space the Landlord indicated that the other person (the person he was supposed to share a bathroom with) had "suddenly moved out". She didn't give any kind of explanation as to why.

The Tenant stated after he agreed to rent the rental unit, the Landlord told him that she was going to have a couple come and stay for two weeks. The Tenant thought that she was intending to operate an AirBnB and he didn't want to move into a rental unit with transient renters as he didn't want to have his possessions available to people who were coming and going. He also stated that from the time he spoke to her and signed the agreement to backing out of the deal it was only a couple days such that he doesn't understand why it then took her nearly two months to rent that room.

The Tenant also stated that he made an offer to the Landlord that she keep the half a month's rent but to return his deposit; this was refused by the Landlord.

The Tenant stated that the Landlord did not take her rental ads down as she claimed and that nothing changed in the one day from when he agreed to stay and then changed his mind.

In reply to the Tenant's submissions the Landlord stated that the other bedroom was vacant from February 1-9, 2018 when a couple moved in for two weeks, following which the female tenant stayed for three months such that it was not a short term rental.

The Landlord also stated that the other tenant was not a yoga instructor; rather *she* was interested in yoga. She also claimed that as the other bedroom was vacant the other renter was an unknown at the time the subject tenancy was to begin.

The Landlord stated that it took a “considerable amount of time and energy” to repost the online rental ad. She stated that she had to rewrite the ad “fresh” otherwise it would look like an old ad and be pushed down to the bottom.

### Analysis

In this section reference will be made to the *Residential Tenancy Act, Regulation*, and *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).

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

Although this was addressed during the hearing, I wish to confirm my reasons for my finding that the Landlord named on the Application is a Landlord for the purposes of the *Residential Tenancy Act*.

Section 1 of the *Residential Tenancy Act* provides the following definition of “landlord”:

**"landlord"**, in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

I find, by operation of her original tenancy agreement, the Landlord was permitted to enter into sub-tenancies such that she became a Landlord in respect of the tenancy dispute before me.

I will now address the Landlord’s monetary claim.

The Landlord seeks monetary compensation for loss of rent pursuant to a tenancy agreement signed on February 7, 2018.

The undisputed evidence is that the Tenant signed the agreement and then informed the Landlord he did not wish to take the rental unit.

Section 16 of the *Act* provides that:

**16** The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

As such, and pursuant to section 16, even though the Tenant never moved into the rental unit, the parties were bound by the agreement as of February 7, 2018.

A tenant may end a tenancy provided that the notice complies with sections 45 and 52 of the *Act*, which provide as follows:

**Tenant's notice**

**45** (1) A tenant may end a periodic 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, and

(b) 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.

(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 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*].

**Form and content of notice to end tenancy**

**52** In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

As this was a fixed term tenancy, the earliest the Tenant could end his tenancy was August 31, 2018, pursuant to section 45(2)(b). Consequently, the Tenant was potentially liable for the balance of the rent owing for the full fixed term.

The Landlord claimed monetary compensation for loss of rent from February 15 to March 31, 2018 claiming that she was not able to re-rent the rental unit until April 1, 2018.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 7(2) of the *Act* requires that the party claiming compensation for damage or loss must do whatever is reasonable to minimize the damage or loss. This is commonly referred to as the duty to mitigate losses.

There currently exists a housing crisis in British Columbia such that rental units rarely remain vacant for any period of time.

The Landlord testified that while there is a housing crisis, the community in which the rental unit is located is not in as high of demand as some communities. Further, she noted that as this is a shared accommodation, it is more difficult to find someone who

fits in with the rest of the house. I accept the Landlord's testimony in this regard and note that the other bedroom was also vacant at the time the tenancy was to begin.

The Landlord further testified that as soon as she signed the agreement with the Tenant she removed her advertising from popular buy and sell websites and ceased marketing the property. She stated that it took her a "tremendous amount of time and effort to recreate the ads" for the property as she could not simply repost them as they would remain in their original position, which would be further down the ad list. She also noted that she was highly motivated to re-rent the unit as she was liable for the full rent pursuant to her own tenancy agreement.

The Tenant alleges the ads were never taken down, and submitted that nothing changed from the date he signed the agreement to the date he informed the Landlord he did not intend to follow through with the tenancy.

The Tenant further submitted that he did not wish to move into the rental unit as the person who was living there prior moved out suddenly and he believed the Landlord was intending to rent the other rooms on a short term basis. The Landlord testified that the other bedroom was vacant at the time the Tenant signed the agreement, such that she did not know who else would be living in the rental home at the time. She also testified that one of the people who moved in subsequently stayed three months.

I am unable, based on the evidence before me, to reconcile the discrepancy in this testimony, however even in the event the Landlord rented the other bedrooms out on a short term basis, this would not be grounds for the Tenant to end his tenancy early. I am not satisfied that the composition of the other renters was a material term of the tenancy as contemplated by section 45(3) and even if I was, the Tenant did not give the Landlord an opportunity to correct the situation as required by that section.

On balance, I am satisfied that the Landlord was not able to re-rent the rental unit until April 1, 2018 and I accept her testimony that she made her best efforts to re-rent the unit. As such, I find she suffered a loss of \$1,642.50 representing one and one half month's rent at \$1,095.00 per month. I therefore award the Landlord recovery of this amount.

### Conclusion

The Landlord's claim for monetary compensation for loss of rent in the amount of **\$1,642.50** is granted.

In furtherance of this, and pursuant to sections 38 and 72 of the *Act*, I authorize the Landlord to retain the Tenant's \$547.50 security deposit and \$547.50 pet damage deposit, as well as the \$547.50 received from the Tenant for half the month of February 2018.

The Landlord has been successful in her application such that she is entitled to recover the \$100.00 filing fee. The Landlord is granted a Monetary Order in the amount of \$100.00. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division) 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: December 12, 2018

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Residential Tenancy Branch