



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL, MNRL-S  
                             FFT, MNDC, MNSD

### Introduction

This hearing convened as a result of cross applications. In the Landlord's Application for Dispute Resolution, filed on December 6, 2018, the Landlord requested monetary compensation from the Tenants for unpaid rent, authority to retain their security deposit and to recover the filing fee. In the Tenant's Application for Dispute Resolution, filed on December 26, 2018, the Tenants requested monetary compensation from the Landlord return of their security deposit and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on March 29, 2019. 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.

### Preliminary Matters

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party.

### Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. Are the Tenants entitled to monetary compensation from the Landlord?
3. What should happen with the Tenants' security deposit?
4. Should either party recover the filing fee?

### Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement providing that this tenancy began September 1, 2018 and was to continue until April 1, 2019. Monthly rent was \$1,700.00 per month. The Landlord received an \$850.00 security deposit.

Introduced in evidence was a copy of a letter from the Tenants dated September 10, 2018 (which the Landlord says she received on September 12, 2018) whereby the Tenants gave their notice to end their tenancy. The notice indicated that the Tenants intended to move from the rental unit on September 13, 2018.

The Landlord testified that the Tenants moved out as of September 12, 2018.

The Landlord confirmed that she re-rented the unit as of December 1, 2018.

The Landlord confirmed that she was not seeking loss of rent for November. She sought to retain the Tenant's \$850.00 security deposit towards the loss of rent for October and a monetary order for \$850.00 for the balance of the month.

The Landlord stated that the Tenants did not provide their forwarding address in writing. She confirmed that although the Tenants demanded return of their deposit in two text messages and an email (as provided in evidence) they did not provide their forwarding address as required.

The Landlord testified that in the first week of December 2018 she asked the Tenants for their forwarding address in writing; when the address was provided she applied for dispute resolution on December 6, 2018.

The Landlord stated that as soon as the Tenants left she advertised the rental property on Craigslist. The Landlord stated that she did not advertise anywhere else, although she went through other sites, such as Kijii, or the university website to see other people who were looking. She also stated that she “talked to people” and began emailing people who had posted that they were looking for accommodation.

The Landlord stated that she did not consider the people who were suggested by the Tenants as only one person contacted the Landlord and did not turn up for the interview.

The Landlord confirmed that she has rented the rental unit for \$1,600.00 per month as of December 2018. She stated that after two months of vacancy she dropped the price.

In response to the Landlord’s claims, the Tenant stated that they did not believe they were responsible for paying the balance of the rent because the landlord did not make her best efforts to re-rent the rental unit.

The Tenant S.M. confirmed that the \$1,275.00 claimed on their Application included return of the rent paid for September 2018 for days in which they were not in occupation.

The Tenant stated that because both boxes were checked off on the tenancy agreement she was not sure whether it was a fixed term or a month to month and whether they should be able to sublet.

The Tenant also stated that she had friends who were able to move into the rental unit. They suggested these people could sublet or take over their lease and the Landlord did not accept them.

The Tenant stated that they do not believe that the Landlord adequately mitigated her losses. The Tenant stated that she put an ad on multiple housing groups and a lot of people messaged her back. The Tenant stated that a lot of those people (3-4) stated that the Landlord did not answer their call or reply to their messages.

The Tenant also stated that they went online to see if the house was on Craigslist and they did not see the house advertised.

The Tenant stated that they were actively trying to help the Landlord re-rent it because they believed it was a fixed term and they were worried the Landlord was going to come

after them for the full term. The Tenant stated that they continued to look into October and they did not see the ad there.

The Tenant further stated that there are so many people, particularly students, who are looking for housing that the Tenants do not believe that she tried to re-rent it as they believe that had she done so the Landlord would have rented it out.

In reply the Landlord stated that she removed the Craigslist ad and then reposted it to ensure that it remained “at the top of the list” which is common practice on such online sites.

### Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *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).

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.

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.

The Landlord seeks monetary compensation representing loss of rental income for the month of October 2018.

A tenancy may only be ended in accordance with the *Residential Tenancy Act*. A tenant may end a tenancy pursuant to section 45 of the *Act* which reads as follows:

**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]*.

As section 52 is referenced in section 45, I reproduce that section as follows:

**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.

The evidence confirms that the Tenants gave notice to end their tenancy on September 10, 2018. Pursuant to section 45(2) the effective date of their notice is October 31, 2018.

There was no dispute the Tenants failed to pay rent for October 2018. The Tenants allege the Landlord did not actively market the rental unit and therefore did not mitigate her losses. However as the effective date of the Tenants' notice was October 31, 2018, the Tenants were legally entitled to possession of the rental unit until that date such that the Landlord's ability to market the rental unit was impacted.

In any case, I accept the Landlord's evidence that she attempted to market the rental unit as quickly as possible after receiving the Tenants' notice. I also accept her testimony that if the unit was not showing on a particular online site it may have been when she was updating the ad to ensure its primacy in listing. Further, I accept her evidence that while the Tenants proposed potential renters, those suggestions did not result in a successful tenancy. On balance I find the Landlord fulfilled her obligation to mitigate her losses.

On their Application for Dispute Resolution the Tenants write that they "had to move out due to the fact that the house was unsafe for our health". Although not strenuously argued by the Tenants, the Tenants seem to be alleging the Landlord breached a material term of the tenancy such that they should be able to end their tenancy earlier pursuant to section 45(3).

Hearings before the Residential Tenancy Branch are governed by the *Residential Tenancy Policy Guidelines*. *Guideline 8—Unconscionable and Material Terms* provides that a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. The guideline further provides:

"To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy."

I find that the Tenants have failed to provide sufficient evidence to support a finding that they gave the Landlord written notice of the alleged breach of a material term of the tenancy agreement, and failed to give her an opportunity to correct the breach.

I therefore find the Landlord is entitled to recover the unpaid rent for October 2018 in the amount of **\$1,700.00**. Having been substantially successful in her application I also award the Landlord recovery of the filing fee for a total of **\$1,800.00** in monetary compensation.

In their claim the Tenants sought return of the rent paid for September 2018 as well as recovery of their filing fee. As the effective date of the notice is October 31, 2018, they are not entitled to recover the amounts paid for September 2018.

The Tenants have been unsuccessful in their application; consequently their request to recover the filing fee is dismissed.

As I have awarded the Landlord monetary compensation in the amount of \$1,800.00, I authorize the Landlord, pursuant to section 72(2)(b) of the *Act* (which is reproduced below) to retain the Tenant's \$850.00 security deposit towards the amounts ordered. The Landlord is entitled to a monetary order for the balance due in the amount of **\$950.00**.

**72** (1) The director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant

### Conclusion

The Landlord's Application for monetary compensation for unpaid rent for October 2018 as well as her claim to recover the filing fee is granted.

The Landlord may retain the Tenants' security deposit of \$850.00 and is granted a Monetary Order for the balance due in the amount of **\$950.00**. This Order must be served on the Tenants and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

The Tenant's Application is dismissed.

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: April 17, 2019

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Residential Tenancy Branch