



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, FFL

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on February 11, 2021, wherein the Landlord requested monetary compensation from the Tenant for unpaid rent, authority to retain her deposits towards the amounts awarded and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on June 28, 2021. 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 were cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

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 parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and 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. Should the Landlord be authorized to retain the Tenant's security and pet damage deposit?
3. Should the Landlord recover the filing fee?

### Background and Evidence

The Landlord testified in support of her claim as follows. She stated that she rents an entire home, rents out the basement to subtenants and has done so for seven years. In this case she rented the basement rental unit to the Tenant as of January 1, 2021. Monthly rent was \$1,550.00 and the Tenant paid a \$775.00 security deposit and a \$775.00 pet damage deposit.

The Landlord stated that on January 28, 2021, the Tenant only gave three days notice to end her tenancy and moved out February 1, 2021.

The Landlord further stated that she did not re-rent the unit as on January 9, 2021, the homeowner told the Landlord that she was going to sell the home. She immediately informed the Tenant but did not receive a formal 2 Month Notice to End Tenancy for Landlord's use. The Landlord confirmed that she did not move out until March 15, 2021 such that she could have continued to rent the unit to the Tenant. The Landlord further testified that she relied on the rental income from the basement suite to meet her monthly expenses and was left in a difficult financial position when the Tenant moved without adequate notice.

In response the Tenant stated as follows. She stated that she moved into the rental unit on January 15, 2021. She confirmed that she gave notice to end her tenancy on January 28, 2021 and moved out by the end of January.

In terms of her reasons for moving, the Tenant stated that on January 9, 2021 she was informed by the Landlord that the home owners were selling the rental home. The Tenant stated she was shocked as this was the first time she was aware the Landlord did not own the home.

The Tenant stated that she called the Residential Tenancy Branch and was informed that she did not have to give 30 days notice as she was not a tenant, but a roommate or boarder. The Tenant confirmed that she did not share a kitchen or bathroom with the Landlord.

## Analysis

The Landlord seeks monetary compensation for unpaid rent on the basis the Tenant failed to give adequate notice to end her tenancy.

The Tenant submitted that she was not a tenant, but a roommate or boarder.

Section 4(c) of the *Act* provides as follows:

**4** This Act does not apply to

...

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,

The undisputed evidence before me is that the Landlord is not the owner. Additionally, it was undisputed that the parties did not share a kitchen or bathroom. I accept the Landlord's evidence that she has been the head tenant for seven years and during that time she has rented out the basement suite. These parties are not roommates and the Tenant is not a boarder, rather they have established a tenancy arrangement, and both bound by the *Act*.

The Tenant gave notice to end her tenancy on January 28, 2021, and this notice was to be effective January 31, 2021.

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.

The parties agreed the Tenant gave notice to end her tenancy on January 28, 2021. The effective date of the notice is therefore February 28, 2021. As the Tenant failed to pay rent for February, the Landlord is entitled to monetary compensation from the Tenant for unpaid rent as claimed.

### **Conclusion**

I grant the Landlord's request for monetary compensation for unpaid rent in the amount of **\$1,550.00**. Pursuant to sections 38 and 72 of the *Act* I authorize the Landlord to retain the Tenant's \$775.00 security deposit and \$775.00 towards this amount.

I also award the Landlord recovery of the \$00.00 filing fee as she has been successful in her Application. She is entitled to a Monetary Order in this amount. Should the Tenant not pay the \$100.00 the Landlord must serve the Order on the Tenant and may file and enforce it in the B.C. Provincial Court (small claims division).

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: June 28, 2021

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Residential Tenancy Branch