



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VANCOUVER APARTMENT RENTALS  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, FFL

### Introduction

This hearing convened as a result of Landlord's Application for Dispute Resolution, filed on April 6, 2021, in which the Landlord requested monetary compensation from the Tenant for unpaid rent and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on September 3, 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 for unpaid rent?

2. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord's Director, B.W. testified as follows. This tenancy began April 1, 2019. Monthly rent was originally \$1,305.00 and was raised to \$1,340.00 at the end of the tenancy. The Tenant paid a \$702.50 security deposit.

B.W. confirmed that it is the Landlord's position that the Tenant failed to give proper notice to end her tenancy such that the Landlord suffered a loss of rent. B.W. testified that the Landlord only became aware she had moved out three days prior to the end of the fixed term on March 31, 2021. Accordingly, the Landlord claimed loss of rent for April 2021.

The parties entered into a tenancy agreement (a copy of which was in evidence before me) and which included the following clauses:

D. At the end of this time the tenancy is ended and the tenant **must vacate** the rental unit. This requirement is only permitted in circumstances prescribed in section 13.1 of the rental tenancy regulations, or if this is a sub-let agreement.

Reason the tenant must vacate (required) – Sub lease ending Residential Tenancy Regulation section number (if applicable) 44(1)(g)

**IF YOU CHOOSE D, BOTH THE Tenant AND Sub-Tenant MUST INITIAL HERE initialled by both parties**

**E. At the end of each fixed term, unless a new lease is signed by the parties, this sub-lease will continue for another fixed term of 1 year on the same terms and conditions, except the rent and fees which will be deemed to be increased by a minimum of 2% or such other rent and fees as communicated to the Sub-Tenant by notice prior to the expiry of the term, unless the Sub-Tenant or the Tenant gives written notice to end the sub-lease at least one clear month before the end of the current fixed term. At the end of the final fixed term, the sub-lease will end and the Sub-Tenant will vacate the unit (See above).**

The Landlord relied on clause E of the Agreement and requested monetary compensation for unpaid rent for April 2021 on the basis they were not able to rent the unit for that month.

Tenant responded to the Landlord's claim as follows. Firstly, she submitted that the rent increase to \$1,340.00 plus utilities was not allowable during the rent freeze during the COVID-19 state of emergency. As such it was her position that the correct amount of rent is \$1,305.00 plus utilities.

The Tenant confirmed that she signed a one fixed term tenancy which expired March 31, 2020. She then signed a further agreement which was set to expire on March 31, 2021. When she decided to move out at the end of the second term, she contacted the RTB and was informed that a fixed term tenancy agreement with a move out clause means that the Tenant does not need to give notice to end her tenancy at the end of the fixed term. She confirmed she relied on this advice and moved out.

The Tenant also relied on clause D of the agreement as reproduced above which provided that her subtenancy was to end at the end of the term. The Tenant noted that the original tenant initialled that clause as did the Tenant as a subtenant.

In terms of giving notice to end her tenancy, the Tenant disputed the Landlord's claim that she failed to do so. Rather, she testified that she gave notice to end her tenancy by sending a text message to the building manager at the end of March 2021. She then gave then the building manager a letter in person and the building manager refused to accept it. The Tenant also claimed that that she contacted the building manager and left a voice mail, yet the building manager did not answer or call back. The Tenant also informed the building manager that she was moving out.

The Tenant noted that as of March 31, 2021, when they did the move out inspection, the building manager had already changed the locks on the rental unit. The Tenant noted that they then asked her for rent for April 2021, yet at the same time they denied her access to the unit during that month.

### Analysis

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

*Residential Tenancy Branch Policy Guideline 19—Assignment and Sublet* provides in part as follows:

**Assignment** is the act of permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord.

...

When a rental unit is **sublet**, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the sub-tenant enter into a new agreement (referred to as a sublease agreement). Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant.

This must be for a period shorter than the term of the original tenant's tenancy agreement and the subtenant must agree to vacate the rental unit on a specific date at the end of sublease agreement term, allowing the original tenant to move back into the rental unit. The original tenant remains the tenant of the original landlord, and, upon moving out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the "landlord" of the sub-tenant.

[emphasis added in bold]

While the parties agree this was a sublet agreement, I was not provided with a copy of the original tenancy agreement, such that it is not possible to determine the term of the original tenancy. I therefore make no finding as to whether the tenancy giving rise to this application was an assignment or sublet.

Each party relies on the tenancy agreement in support of their position. The Landlord submits that this fixed term tenancy was to continue for a further fixed term, pursuant to Clause E such that the Tenant was required to give one month's clear notice to end her tenancy. The Tenant submits that she was entitled to end her tenancy at the end of the fixed term on March 31, 2021, pursuant to Clause D. Notably Clause D was initialled by both parties.

When interpreting contracts, such as residential tenancy agreements, the following guidance can be found in G.H.L. Fridman, "The Law of Contract in Canada" (Carswell, Thomson Canada Limited, 1994), pages 466-474:

- Where there is no ambiguity in a written contract it must be given its literal meaning .
- In accordance with what is sometimes referred to as the "golden rule", words must be given their plain, ordinary meaning, at least unless to do so would result in an absurdity.
- If there are two possible interpretations, one of which is absurd or unjust, the other of which rational, the latter must be taken as the correct one, on this basis of giving effect to the general contractual intentions of the parties.
- The contract should be construed as a whole, giving effect to everything in it, if at all possible.
- No word should be superfluous.
- If a single transaction is carried into effect by several documents, the whole is treated as one document and they must all be read together for the purpose of ascertaining the intention of the parties.

- Where the contract is ambiguous, the application of the *contra proferentem* rule ensures that the meaning least favourable to the author of the document prevails. In other words, where there is ambiguity in a contract the contract should be interpreted in favour of the party who did not draft the contract.
- A court is entitled to conclude that everything that was agreed between the parties is not contained in the written document or documents that make up the contract, and that it is possible, and justifiable to import or imply into the contract some additional term or terms, in order to establish the nature and scope of the contractual obligations binding the respective parties.

In this case, I find clause D and E to have created ambiguity in the residential tenancy agreement signed by the parties. Clause D provides the tenancy is to end at the end of the fixed term, Clause E provides that it automatically renews. When interpreting this contract, the ambiguity must be interpreted in favour of the Tenant pursuant to the *Contra proferentem* legal principle which provides that where there is ambiguity in a contract the contract should be interpreted in favour of the party who did not draft the contract. In this case, the Landlord drafted the residential tenancy agreement (contract) and as such an ambiguity should be interpreted in favour of the Tenant.

I therefore find the Tenant was permitted to end her tenancy at the end of the fixed term pursuant to Clause D of the agreement. Accordingly, the Landlord's request for compensation for rent after the end of the fixed term is denied.

As the Landlord has been unsuccessful in this Application, I find they are also not entitled to recover the filing fee.

I also note that Clause E provides for an automatic rent increase. The Landlord is reminded that rent may only be increased in accordance with the legislation and that a party may not attempt to contract out of the *Act* pursuant to section 5 which reads as follows:

**This Act cannot be avoided**

- 5      (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
- (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Conclusion

The Landlord's request for monetary compensation from the Tenant for unpaid rent and recovery of the filing fee is dismissed.

The Landlord must return the Tenant's **\$702.50** security deposit to the Tenant. In furtherance of this I grant the Tenant a Monetary Order in the amount of **\$702.50**. This Order must be served on the Landlord and may be filed and enforced 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: September 29, 2021

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Residential Tenancy Branch