



# 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 dealt with a landlord's application for a Monetary Order for unpaid and/or loss of rent and authorization to retain the tenant's security deposit.

Both parties appeared at the hearing. The landlord also had a representative speaking on her behalf and assisting the landlord.

The hearing was held over two dates and the Interim Decision should be read in conjunction with this decision.

As seen in the Interim Decision, I have already provided the tenant with a Monetary Order for the amount of the security deposit. Accordingly, I will not deduct the security deposit from any amount awarded to the landlord in this decision or provide the tenant with another Monetary Order if the landlord's claim is dismissed .

### Issue(s) to be Decided

1. Has the landlord established an entitlement to the amount of loss of rent claimed against the tenant?
2. Award of the filing fee.

### Background and Evidence

The parties entered into a one-year fixed term tenancy agreement that was set to commence on January 1, 2022 and end on December 31, 2022. The landlord collected a security deposit of \$725.00 and the rent was set at \$1450.00 payable on the first day of every month.

The rental unit was one of two basement suites in the house. The landlord resided in the unit above the basement suites.

On the first day of the tenancy, a water supply line broke and released water behind the wall in the kitchen for several minutes before it was shut off. That same day the pipe was patched. The landlord had plastic taped over the missing drywall in an effort to appease the tenant's concerns over asbestos or mould.

In mid-February 2022, the tenant informed the landlord, orally, that he could no longer wanted to live in the rental unit. The landlord claims the reason given by the tenant was so that he could live closer to work. The tenant claims the reason given was due to the frequent loss of power in the rental unit and to a lesser extent the repairs that had yet to be made that were caused by the water leak.

On February 28, 2022, the tenant gave the landlord a written notice to end tenancy with an effective date of March 31, 2022. The tenancy ended on March 31, 2022.

The landlord is claiming loss of rent for two months, which she sees as being reasonable since she believes she could have claimed loss of rent for the remaining nine months of the fixed term. The drywall was repaired after the tenant moved out. The landlord did not advertise the rental unit for rent like she did when she found the tenant. Rather, she happen to mention to a friend that she did not have a tenant for the rental unit and as a result of that conversation the landlord found a replacement tenant for June 1, 2022.

The tenant is of the position the rental unit was not liveable as it needed repairs, including to the electrical system as there would be a loss of power to one side of the rental unit fairly frequently, sometimes for hours at a time, meaning he could not work from home during those occasions and the fridge would also go without power.

The tenant attributes the loss of power to the landlord plugging in her electric vehicle. When the landlord did so, the breaker would trip but the breaker panel was in the other basement suite and if that tenant was not home, they had to wait for that tenant to return.

The landlord is of the position the tenant is exaggerating how often the power when out due to use of the electric vehicle charger.

The tenant also submitted that the landlord was agreeable to the tenancy ending early, orally during their conversation, and in text message. The landlord testified that she orally told the tenant he was in a fixed term tenancy. The text message referred to by the tenant indicates the landlord agreed to let the tenant break the lease without “penalty”.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Awards for compensation are provided in section 7 and 67 of the Act, and, as provided in Residential Tenancy Policy Guideline 16: *Compensation for Damage or Loss* it is before me to consider whether:

- a party to the tenancy agreement violated the Act, regulation or tenancy agreement;
- the violation resulted in damages or loss for the party making the claim;
- the party who suffered the damages or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has done whatever is reasonable to minimize that damage or loss.

A tenant in a fixed term tenancy is required to fulfill the term of their agreement and cannot bring the tenancy to an end by giving a one month notice that has an effective date sooner than the fixed term expiry date. There are certain exceptions to ending a fixed term early such as fleeing domestic violence or moving to a long term care home. Also, section 45(3) permits a tenant to end a fixed term tenancy early where the landlord has breached a material term of the tenancy agreement and the landlord has not corrected the breach within a reasonable amount of time after written notice to do so. Section 45(3) provides as follows:

(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.

In this case, the parties had a fixed term tenancy. The tenant had given a written notice on February 28, 2022; however, it did not indicate the landlord was in breach of a

material term and any indication the landlord had to correct the breach within a reasonable amount of time. The tenant's notice of February 28, 2022 reads [identifying information redacted by me]:

While I love this space and you all have been wonderful, the work that I originally moved here for is much further away than the original one that I originally moved here for, making transportation around 1.5hrs plus a day. There are also a number of issues with the suite that you are aware of that are worth looking into without a tenant in residence, primarily the 5'x4' hole in the wall and the electrical halting the use of the stove, washing machine and dryer, microwave, and fridge when plugged into that side of the wall. By the time April rolls around, students will be about to start a summer semester at SFU, and I'm certain that the space can be filled by then, as it's a great space otherwise.

I see these points as both an opportunity for you to work on the space, and for me to find a space closer to my work so I don't waste so much time driving. I'm aware that you were interested in a year of tenancy, but I also see that space isn't quite ready despite how nice it is. I don't feel the need to declare the "frustrated agreement" nor do anything dramatic related to the tenancy branch - I genuinely think the space is good, and that you're in time to find a tenant for the summer semester at SFU. Things change, and many times, it's for the better.

(Please ignore the formal tone of the following, it was taken from a BC tenancy site):

This letter is to inform you of my official 30-day notice to vacate. I will move out and terminate my lease for the property located at [REDACTED]

I am aware a final inspection of the home will take place upon vacating the rental space. I do not believe there are any notable damages since my move in date, but of course, I would be willing to examine the space with you to determine if there were any damages.

Should you need to reach me at any point over the move-out period or beyond, please don't hesitate to contact me via phone ([REDACTED]) or by email ([REDACTED]).

In reading the tenant's notice of February 28, 2022, I find it is more consistent with a tenant giving a one month notice, which is permissible for a month to month tenancy, but not a fixed term. Therefore, I find the tenant did not end the tenancy in a manner permitted under the Act.

Where a tenant fails to fulfill a fixed term tenancy agreement, the landlord may seek recovery of loss of rent for the remainder of the fixed term, provided the landlord took reasonable action to minimize losses.

Residential Tenancy Policy Guideline 3: *Claims for Rent and Damages for Loss of Rent* provides the following paragraph with respect to the duty to minimize loss:

*In all cases, the landlord must do whatever is reasonable to minimize their damages or loss (section 7(2) of the RTA and the MHPTA). **A landlord's duty to***

**mitigate the loss includes rerenting the premises as soon as reasonable for a reasonable amount of rent in the circumstances.** In general, making attempts to re-rent the premises at a greatly increased rent or putting the property on the market for sale would not constitute reasonable steps to minimize the loss.

[My emphasis added]

Residential Tenancy Policy Guideline 5: *Duty to Minimize Loss* provides, in part:

**B. REASONABLE EFFORTS TO MINIMIZE LOSSES**

*A person who suffers damage or loss because their landlord or tenant did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. **Usually, this duty starts when the person knows that damage or loss is occurring.** The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided.*

*In general, a reasonable effort to minimize loss means taking practical and common-sense steps to prevent or minimize avoidable damage or loss.*

...

*Compensation will not be awarded for damage or loss that could have been reasonably avoided.*

[My emphasis added]

As the claimant, the landlord bears the burden to prove she did whatever was reasonable to minimize the loss of rental income. I find the landlord did not satisfy me of she did that. The tenant had given the landlord notice on February 28, 2022 of his intention to end the tenancy effective March 31, 2022. The landlord did not start advertising the unit shortly after that date, which I would expect where a landlord is trying to minimize loss of rent. In fact, the landlord did not advertise the unit at all. Rather, she happen to mention the vacancy to a friend at some undisclosed time which resulted in the subsequent tenant signing a tenancy agreement on April 29, 2022 for a tenancy set to commence on June 1, 2022. I note that the landlord had advertised the unit for rent online when the tenant found their advertisement in December 2021 and it was rented to the tenant starting January 1, 2022. Accordingly, I find advertising the rental unit for rent online was highly effective at finding a tenant in a timely manner yet the landlord chose not to pursue to option when the tenant gave his notice on February 28, 2022, which I find that is unreasonable in the circumstance.

If the landlord used the vacancy to make repairs for the water leak, which was not the tenant's fault, that is the landlord's prerogative; however, that does not create a liability for the tenant where one could have been avoided had the landlord advertised or had the landlord repaired the water damage sooner.

In light of the above, I find the landlord did not prove that reasonable steps were taken to minimize the loss of rent and I dismiss the landlord's claim for loss of rent against the tenant.

Since the landlord was unsuccessful in this application, I make no award for recovery of the filing fee.

### Conclusion

The landlord's claim is dismissed in its entirety.

The tenant has been provided a Monetary Order to ensure the return of his security deposit.

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: May 24, 2023

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Residential Tenancy Branch