



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION AND REASONS

### Dispute Codes:

**MNR, MNSD, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for a monetary Order for loss of rental revenue, to retain all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral evidence, to cross-examine the other party, and to make submissions during the hearing.

### Issue(s) to be Decided

Is the landlord entitled to a monetary Order in the sum of \$2,100.00 for loss of rental revenue?

Is the landlord entitled to filing fee costs?

### Background and Evidence

During the hearing the parties agreed that on March 6, 2009 the tenant signed a month-to-month tenancy with the landlord, commencing on April 1, 2009. Rent was to be \$2,100.00 per month. A deposit of \$1,050.00 was paid on March 6, 2009.

The landlord provided testimony and evidence that is not disputed by the tenant that on March 7, 2009 the tenant notified the landlord that he was unable to move into the rental unit due to a change in personal circumstances. The landlord provided email evidence which indicates that the landlord planned to immediately make efforts to locate a replacement tenant for April 1, 2009.

The landlord stated that on the night of March 6 they listed the rental unit on a popular web site that had brought enquiries when they had first listed the unit for rent. The landlord stated that they also enquired with potential tenants who had contacted them in response to the same advertisement that had attracted the respondent. The landlord testified that those who they could speak with had either found another rental or changed their mind.

The landlord testified that by March 22, 2009 they had located a new tenant who could take possession of the unit on May 1, 2009. The landlord stated that it was too late in

the month to find anyone who could commit to an April 1 move-in and as the rent for this brand new townhouse is considerable and it discouraged anyone from agreeing to pay rent at two locations for the month of April.

The landlord testified that they did retain the deposit, despite a request from the tenant that it be returned.

The tenant testified that he believes the landlord had enough time to locate a suitable tenant for April 1, 2009. The tenant is not convinced that the landlords made efforts to contact individuals who had previously indicated an interest in the rental.

The landlord has claimed a loss of rental revenue for April in the sum of \$2,100.00

### Analysis

A tenancy agreement was made between the parties and the tenant was to take possession of the rental unit on April 1, 2009. Section 16 of the Act determines that once a tenancy agreement is signed, the rights and obligations of the landlord and tenant take effect.

On March 6, 2009 the tenant provided Notice that he would not move into the rental unit. When a tenant ends a month-to-month tenancy the tenant must provide the landlord with one month's notice and give that notice in writing at least one day prior to the day on which the rent is due. I find that the tenant has provided the landlord with written notice to end this tenancy, effective April 30, 2009.

Section 7 of the Act requires both parties to mitigate any potential loss and in I find that the landlord did make efforts to locate a replacement tenant. The landlord did not find a new tenant for an April 1 possession and this is not surprising, given the short period of time the landlord had to find another tenant. The tenant could not have given Notice to end this tenancy, as required by the Act, for an effective date any earlier than April 30, 2009. Therefore, I find that the landlord is entitled to compensation for the loss of April, 2009 rental revenue.

I find that the landlord may retain the deposit held in trust in the sum of \$1,050.00 in partial satisfaction of the monetary claim.

I find that the landlord's application has merit, and that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that this tenancy did commence on April 1, 2009 and ceased effective April 30, 2009. The landlord made Application for Dispute Resolution on March 25, 2009.

### Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$2,150.00, which is comprised of \$2,100.00 in April rent revenue loss and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. The

Landlord will be retaining the Tenant's security deposit in the amount of **\$1,050.00**, in partial satisfaction of the monetary claim. According to the Residential Tenancy Branch deposit interest calculator no interest has accumulated on the deposit paid.

Based on these determinations I grant the Landlord a monetary Order for the balance of **\$1,100.00**. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Referenced sections of the Act are appended at the bottom of this decision.

Dated June 24, 2009.

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Dispute Resolution Officer

### **Start of rights and obligations under tenancy agreement**

- 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.

### **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.