



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNR, MNDC, MNSD, & FF

### Introduction

This hearing dealt with an application by the landlord seeking compensation due to the tenant's breach of a fixed term tenancy agreement. The landlord appeared for the hearing, provided documentary evidence prior to the hearing in accordance with the rules of procedure and gave affirmed oral testimony. The tenant did not appear for the hearing.

The landlord made several amendments to the tenancy agreement; however, only two of the amendments were made in accordance with the rules of procedure. I accept the documentary evidence provided by the landlord which demonstrates that the tenant was served with notice of the original application in September 2010 and with an amendment in December 2010 by registered mail. The landlord made a further request for amendment in January 2011; however, this was not completed in accordance with the rules of procedure and was not accepted.

Based on the documentary evidence provided by the landlord, I am satisfied that the tenant was served with notice of this proceeding by registered mail and I deem that the tenant received notice on the fifth day after the registered mail was sent pursuant to section 90(a) of the *Act*.

I proceeded with the hearing in the tenant's absence.

### Issue(s) to be Decided

Did the tenant breach the fixed term tenancy agreement entitling the landlord to compensation related to loss of rent?

### Background and Evidence

On August 19, 2010 the parties entered into a fixed term tenancy agreement which commenced on September 1, 2010 ending on September 30, 2011. The monthly rent is \$950.00 and the tenant was to pay a \$475.00 security deposit. The tenant provided the

landlord with a cheque dated September 1, 2010 in the amount of \$1,425.00 which was comprised of the \$950.00 monthly rent and the \$475.00 security deposit. The tenant put a stop payment on this cheque and it was never negotiated.

On August 27, 2010 the tenant wrote the landlord stating that she could not perform the fixed term tenancy and that she would be vacating the rental unit on September 1, 2010. The landlord stated that the tenant was allowed to move into the rental unit a few days early and the tenant did vacate on September 1, 2010.

The landlord stated the he told the tenant she was responsible for the fixed term tenancy but all attempts would be made to find a new occupant to minimize the tenant's obligation.

The landlord submitted that the rental unit remains vacate despite attempts to rent the unit. The landlord stated that the rental unit is advertized in the local paper and on several common web sites. The landlord stated that the rent has also been reduced to attract more renters. The unit has been viewed on 5 or 6 occasions but without success. The landlord submitted that the rental market declines in this area from September to March. The landlord also stated that the unit is on the ground floor and a few prospective renters have opted to units above ground.

The landlord seeks a monetary claim in the amount of \$4,286.00 comprised of four months outstanding rent, a \$336.00 tenant replacement fee charged to the landlord by the property management company, and recovery of a move in/move out fee of \$100.00, and the recovery of the \$50.00 filing fee paid for this application.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard. To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

First proof that the damage or loss exists, secondly, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, thirdly, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and lastly proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I accept the evidence provided by the landlord that the tenant signed a fixed term tenancy commencing September 1, 2010 for a 12 month period. By signing this agreement the tenant agreed to rent the premises for the entire period and is responsible for any loss of rental revenue during the term of the tenancy. The landlord must comply with section 7 of the *Act* and take all reasonable steps to mitigate or minimize the loss.

I am satisfied that the landlord has taken reasonable steps to advertize and show the rental unit in attempt to find new occupants but to date has been unsuccessful. Therefore, I find that the tenant is responsible for the landlord's loss of rental income at the monthly rent of \$950.00 for five months to the end of January 2011 in the amount of \$4,750.00.

I deny the landlord's claim for recovery of a move in/move out fee of \$100.00. The tenancy agreement between the parties does not indicate that any fees will be charged and the landlord did not provide any evidence that the tenant reviewed and was aware of the strata bylaws requiring that a move in/move out fee be paid. Also, the landlord did not provide any verification that a move in/move out fee was charged against the landlord.

I also deny the landlord's claim of \$336.00 for a 'tenant placement fee charged to the landlord by a property management company. This is a cost of conducting business as a landlord. In addition, the landlord did not provide any verification that this fee was charged or paid.

As the landlord was partially successful with this application, I grant the landlord's request to recover the \$50.00 filing fee from the tenant. I find that the landlord has established a total monetary claim in the amount of **\$4,800.00**.

Conclusion

I grant the landlord a monetary Order for the amount of **\$4,800.00** due to the tenant's breach of the fixed term tenancy. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: January 14, 2011.

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Residential Tenancy Branch