

## DECISION

### Dispute Codes:

MNDC, MNR, MNSD, FF

### Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Landlord stated that the Landlord's Application for Dispute Resolution, the Notice of Hearing, and some documents the Landlord wishes to rely upon as evidence were mailed to the Tenant on February 05, 2013. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Landlord subsequently submitted copies of Canada Post documents to the Residential Tenancy Branch. As these documents were not served to the Tenant they were not accepted as evidence for these proceedings.

The Tenant stated that the Tenant's Application for Dispute Resolution, the Notice of Hearing, and some documents the Tenant wishes to rely upon as evidence were mailed to the Landlord on April 16, 2013. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent/loss of revenue; is the Tenant entitled to compensation for being required to vacate the rental unit and/or for property left at the rental unit; and should the security deposit be retained by the Landlord or returned to the Tenant?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on July 01, 2012; that the agreement required the Tenant to pay monthly rent of \$1,650.00 by the first day of each month; that the Tenant paid a security deposit of \$1,650.00 for this furnished rental unit; and that no rent has been paid for January of 2013.

The Landlord stated that on January 12, 2013 she informed the Tenant she would be attending the rental unit on January 14, 2013; that she attended the rental unit on January 14, 2013 and were met by an older couple she did not know; that the couple did not speak English; that they willingly returned one set of keys to her; that all of the groceries and personal property, with the exception of a Shaw modem, had been removed from the rental unit at the time of her attendance, with the exception of a small amount of personal property the elderly couple took with them when they left; and that she asked for the second set of keys when they were riding together on the elevator, which were provided to her.

The male Tenant stated that on January 12, 2013 the Landlord informed the Tenant, via email, that she would be attending the rental unit on January 14, 2013; that the elderly couple who met the Landlord on January 14, 2013 were his parents; that they do not speak English; that when the Landlord came to the rental unit on January 14, 2013 the only personal belongings in the unit were a few groceries, some children's toys, and a Shaw modem; that they were still living in the rental unit but they were out of the city; that his parents were staying at the rental unit at his request; that the Landlord asked for the keys from his parents and told them to leave; and that his parents returned the keys and left at the request of the Landlord.

The Landlord and the Tenant agree that neither party gave written notice to end this tenancy.

The Landlord stated that she received a forwarding address in the mail on February 01, 2013. She stated that she assumed the forwarding address was from the Tenant, although there was no name on the document mailed to her. The forwarding address she received is the correct service address for the Tenant. The Landlord filed her Application for Dispute Resolution on February 04, 2013.

The male Tenant stated that a forwarding address was mailed to the Landlord, although he is uncertain of the date.

The Landlord is seeking compensation for unpaid rent from January of 2013 and loss of revenue in February of 2013. She stated that she advertised the rental unit on a popular website on January 17, 2013 and was able to rent the unit for February 01, 2013, at a reduced rate of \$1,500.00.

The Tenant is seeking compensation of \$1,650.00 for "loss of possession" of the rental unit and \$1,176.00 for staying in a hotel during the latter part of January. The Tenant contends that the hotel costs were incurred as a result of being required to vacate the rental unit.

The Landlord and the Tenant agree that a Shaw modem was left in the rental unit at the end of the tenancy and that the Tenant has made no effort to recover the modem after the rental unit was vacated.

### Analysis

On the basis of the undisputed evidence, I find that the parties entered into a tenancy agreement that required the Tenant to pay monthly rent of \$1,650.00 by the first day of each month; that the tenancy had not ended by January 01, 2013; and that the Tenant did not pay rent that was due on January 01, 2013. As the Tenant was obligated to pay rent when it was due, pursuant to section 26 of the *Residential Tenancy Act (Act)*, I find that the Tenant owes the Landlord \$1,650.00 in rent for January of 2013.

After hearing the contradictory testimony regarding how this tenancy ended, I find that the version of events provided by the Landlord is more probable than the version of events provided by the Tenant. I find it difficult to believe that people who are "house sitting" for a tenant would remove most of a tenant's personal items from a rental unit at the request of a landlord without contacting the Tenant or a government agency to ensure this is an appropriate course of action. I find it more likely that the Tenant was intending to vacate the rental unit, given they had not paid rent and there was very little personal property in the unit on January 14, 2013, and that the male Tenant's parents finished vacating the unit and returned the keys when the Landlord arrived.

I favoured the testimony of the Landlord over the testimony of the Tenant in regards to the events of January 14, 2013, in part, because the Landlord was at the rental unit on that date. Conversely, the Tenant was not at the rental unit on that day and he is merely providing hearsay evidence from his parents, which is subject to a variety of frailties.

Even if I determined the version of events provided by the Tenant was true, I could not conclude that the Tenant was "forced" to leave the rental unit. A tenant has the right to occupy a rental unit until the tenancy is legally ended. As a verbal request does not serve to end a tenancy and no legal notice was served that ends the tenancy, the male Tenant's parents had the option to simply decline the Landlord's request. In determining this matter I note that there is no evidence that would cause me to conclude that the occupants left as a result of violence or the threat of violence.

As I have insufficient evidence to conclude that the Landlord ended this tenancy, I find that the Tenant vacated the rental unit without providing the Landlord with proper notice. I find that the lack of notice made it difficult for the Landlord to find a new tenant for February 01, 2013. I find that the Landlord acted reasonably in re-renting the unit at a reduced rate of \$1,500.00, given the limited time she had to find a new tenant. I therefore find that the Tenant must compensate the Landlord for the loss of revenue she experienced for February of 2013, in the amount of \$150.00.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing an Application.

As I am not satisfied that the Landlord ended this tenancy or that the Tenant was obligated to vacate the rental unit on January 14, 2013, I find that the Tenant is not entitled to compensation arising from how this tenancy ended, including "loss of possession" or alternate accommodation costs.

Tenants are obligated to remove all personal belongings from a rental unit at the end of the tenancy. As the Tenant neglected to take the Shaw modem with them at the end of the tenancy and the Tenant has made no effort to make arrangements to recover that item, I find that the Tenant is not entitled to compensation for that item. The Tenant retains the right to make arrangements to recover this item.

I find that the Tenant's Application for Dispute Resolution is without merit and I dismiss the Tenant's application to recover the fee for filing an Application.

### Conclusion

The Landlord has established a monetary claim, in the amount of \$1,850.00, which is comprised of \$1,800.00 in unpaid rent/lost revenue and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the \$1,650.00 security deposit currently in her possession. Based on these determinations I grant the Landlord a monetary Order for the amount \$200.00. 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.

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: April 26, 2013

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Residential Tenancy Branch