



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

**MNDC, MND, MNSD, FF**

### Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for loss of rent revenue, damage to the rental unit, to retain the security deposit and to recover the filing fee from the female tenant A.S. for the cost of this Application for Dispute Resolution.

Both tenants applied requesting return of the security deposit and to recover the filing fee costs from the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Preliminary Matters

The landlord confirmed receipt of the tenants' seven pages of evidence; a copy of the tenancy agreement. The landlord did not make a written submission.

At the start of the hearing the applications were both reviewed. The details of dispute section of the landlord's application included:

*"tenant left with 7 days notice not 30....I am asking to keep the damage deposit also \$750.00 of last rent cause I couldn't rent it. Damage to walls needs holes fixed and to be repainted in some areas."*

(Reproduced as written)

The monetary Order section of the application did not provide the amount of the claim made.

From a review of the application I determined that the landlord had requested compensation for the last months' rent, including the security deposit.

There was no claim set out in relation to damage to the rental unit.

Issue(s) to be Decided

Are the tenants entitled to return of the security deposit?

Is the landlord entitled to compensation in the sum of \$1,500.00 for loss of October 2015 rent revenue?

Are the tenants entitled to return of the security deposit?

Background and Evidence

The tenancy commenced on July 1, 2015; rent was \$1,500.00 due on the first day of each month. A security deposit in the sum of \$750.00 was paid. The landlord lived in the lower portion of the home; the rental unit was on the upper floor. This was a month-to-month tenancy term.

The male tenant said he returned home from work on September 20, 2015 and went upstairs. The landlord then yelled through the floor at the tenants. The tenant said the landlord knew they had a special needs child who could make some noise. The tenant went downstairs and told the landlord not to yell. The conversation became heated. There was no dispute that during this conversation the landlord told the tenants they could leave. The tenant said the landlord stated they could leave "whenever the (expletive) they want."

The landlord did not disagree with the tenants' version of events that occurred on September 20, 2015; he did tell them they could leave. The landlord said it was unfortunate things worked out this way but the tenants' leaving so suddenly caused him to lose rent and that was unacceptable.

The tenants told the landlord they would vacate and they moved out on September 26, 2015. The landlord confirmed receipt of the tenants' written forwarding address on September 26, 2015.

The landlord said that he lost rent for the month of October 2015 as the tenants gave such short notice. The landlord advertised on a popular web site and was willing to make either unit in the home available.

Tenant A.S. said that on October 1, 2015 she went to the rental unit and there was a female at the property. The female asked the tenant why she was there and she explained that she wanted to speak with the landlord. The landlord saw the tenant but went into the house. The tenant said that the female and her children had moved into the rental unit as soon as they vacated.

The landlord stated that the female at the property was a girlfriend who stayed with him for a period of time. The landlord had moved into the upper suite and remained there until the end of October, but he was willing to rent out either of the floors in the home.

### Analysis

From the evidence before me, based on the balance of probabilities, I find that there was meeting of the minds when the tenants said they would vacate and the landlord accepted that offer. The decision of the landlord to accept the end of the tenancy may have been made in the heat of the moment, but the landlord has, to his credit, confirmed that he agreed the tenants should vacate. This agreement was reached on September 20, 2015 and within six days the tenants vacated. They had paid rent to the end of that month.

The decision to end the tenancy was not made in accordance with section 44(1)(c) of the Act; which requires the agreement of a landlord and tenant to be made in writing. The landlord now wishes to rely on the absence of proper notice to end the tenancy as a basis for a claim for loss of rent revenue. From the evidence before me I find that both parties were at fault. They reached agreement the tenancy should end but failed to complete that agreement, in accordance with the Act. A mutual agreement should have been signed, but in this case the tenants acted on what they believed was agreement on the part of the landlord and what I find, on the balance of probabilities was a mutual agreement.

There was no dispute that the tenancy ended by September 30, 2015, and I find, pursuant to section 44(1)(f) that it ended on that date. The question is whether the end of the tenancy entitled the landlord to compensation for loss of rent revenue.

Residential Tenancy Branch policy #3 sets out guidance in relation to landlord claims for loss of rent revenue after a tenancy has ended. In order to find that the landlord is entitled to compensation I must find that the tenants fundamentally breached the tenancy agreement or abandoned the rental unit.

Therefore, as the tenancy ended by mutual agreement I find, on the balance of probabilities that there was no fundamental breach of the tenancy agreement. The tenants did not abandon the rental unit, but vacated based on the verbal agreement that the tenancy would end.

Therefore, as the tenancy ended by agreement of the parties I find, as a result, there was no loss of rent revenue to the landlord.

As the landlord's claim has not succeeded I find that the tenants are entitled to return of the security deposit in the sum of \$750.00.

I decline filing fees to the tenants as the applications both arose from what I find was a failure of each party to comply with their obligations under the Act.

Based on these determinations I grant the tenants a monetary Order in the sum of \$750.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

### Conclusion

The landlord's claim is dismissed.

The tenants are entitled to return of the security deposit.

Filing fees are declined.

This decision is final and binding and 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 28, 2016

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Residential Tenancy Branch