



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REMAX MANAGEMENT SOLUTIONS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, MNR, FF

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord sought \$4,462.50 in monetary compensation from the Tenant for unpaid rent, money owed or compensation for damage or loss under the *Residential Tenancy Act*, Regulation or tenancy agreement and recovery of the filing fee.

K.C. appeared on behalf of the Management Company named on the Application for Dispute Resolution. He confirmed that the Management Company was hired by the property owner D.H. in November of 2015 to deal with the rental unit. K.C. further stated that for all intents and purposes the Corporate Landlord dealt with the Tenant with respect to the rental unit. K.C. gave affirmed testimony and was provided the opportunity to present the Landlord's evidence orally and in written and documentary form, and to make submissions to me.

K.C. testified that the Tenant was served with the Landlord's Application for Dispute Resolution, the Notice of Hearing and the Landlord's evidence by registered mail sent on January 29, 2016. A copy of the registered mail tracking number was provided in evidence and is reproduced on the cover page of this my Decision.

*Residential Tenancy Policy Guideline, "12. Service Provisions"* provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served by registered mail are deemed served five days later, accordingly I find the Tenant as served as of January 3 2016 and I proceeded with the hearing in his absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Should the Landlord recover the filing fee?

### Background and Evidence

K.C. testified that the property owner, D.H., listed the rental property and shortly thereafter the Tenant contacted her expressing interest in renting the unit. K.C. further stated that the Tenant viewed the rental property in mid-November 2015 and agreed to rent the unit for the sum of \$2,800.00 per month.

Introduced in evidence was a copy of the *Residential Tenancy Agreement Addendum* which was signed by both D.H. and the Tenant on November 17, 2015. Pursuant to the agreement the Tenant was to pay monthly rent in the amount of \$2,800.00 per month on the first of the month for a fixed one year term commencing December 1, 2015.

K.C. testified that the Tenant did not attend the residence on December 1, 2015 at the start of the tenancy. K.C. further testified that D.H. was not able to reach the Tenant and that K.C. finally made contact with the Tenant in mid-December at which time the Tenant informed K.C. that he did not intend to move into the rental unit as he “could not afford it”.

K.C. testified that the Tenant then contacted the property owner, D.H., in the latter part of December 2015 regarding the status of K.C. and the management company named on the Application for Dispute Resolution,. K.C. further testified that D.H. informed the Tenant that K.C. and the management company were responsible for dealing with all issues arising from the rental unit.

K.C. testified that the property was vacant until January 10, 2016 when a new renter was secured. Introduced in evidence was the residential tenancy agreement with the

new tenant confirming that the new tenant paid \$1,987.00 in rent for January 2016. Notably, the Landlord is noted as c/o of the Management Company on this second tenancy agreement.

In the within action the Landlord sought loss of rent for December 2015 in the amount of \$2,800.00, loss of rent for 9 days in January 2016 in the amount of \$813.00, agent fees in the amount of \$262.50 in addition to the filing fee of \$100.00 for a total of \$3,975.50.

The Tenant did not attend the hearing to dispute the Landlord's claims.

### Analysis

In a claim for damage or loss under section 67 of the *Residential Tenancy Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the Act provides that if a Landlord or Tenant does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Based on the undisputed evidence before me the submissions of K.C. and on a balance of probabilities I find as follows.

I find the parties entered into a binding tenancy agreement on November 17, 2015. Pursuant to this agreement, the Tenant agreed to pay monthly rent in the amount of \$2,800.00 payable on the first of the month.

Section 16 of the *Residential Tenancy Act* provides that 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. Accordingly I find the Tenant was obligated to pay rent as of December 1, 2015.

I accept the undisputed testimony of K.C. that the Landlord and the Management Company made their best efforts to re-rent the rental unit as soon as possible and in doing so fulfilled their obligation to minimize their loss. As the Tenant entered into a year-long fixed term tenancy, he was potentially liable for rent for the entire term;

fortunately for the Tenant the Landlord was able to re-rent the unit as of January 10, 2016. Accordingly, I grant the Landlord's request for compensation for unpaid rent for December 2015 in the amount of **\$2,800.00** and **\$813.00** for the days in January 2016 the rental unit remained vacant.

As I informed K.C. during the hearing, agent fees are not recoverable under the *Act*. Accordingly, I decline the Landlord's request for \$262.50 for the fees charged by K.C. to the property owner.

The Landlord, having been substantially successful, is entitled to recover the filing fee in the amount of **\$100.00**. Accordingly, I grant the Landlord a Monetary Order in the amount of **\$3,713.00**. This Order must be served on the Tenant by the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.

### Conclusion

The parties entered into a binding tenancy agreement as of November 17, 2015. While the Tenant failed to occupy the rental unit, he was obligated to pay rent as of December 1, 2015. The Landlord is entitled to monetary compensation in the amount of \$3,713.00 representing unpaid rent for December 2015, 9 days in January 2016 and the \$100.00 filing fee.

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: September 16, 2016

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Residential Tenancy Branch