



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

This matter dealt with an application by the Landlords for a monetary order for loss of rental income, for liquidated damages and to recover the filing fee for this proceeding. The Landlords also applied to keep the Tenant's security deposit.

The Landlords served the Tenant with a copy of the Application and Notice of Hearing to his forwarding address by registered mail on May 21, 2009. According to the Canada Post online tracking system, a notification card was left for the Tenant on May 22, 2009, however he did not pick up the hearing package. I find that the Tenant was served as required by s. 89 of the Act and the hearing proceeded in his absence.

### Issues(s) to be Decided

1. Are the Landlords entitled to compensation for a loss of rental income and if so, how much?
2. Are the Landlords entitled to liquidated damages and if so, how much?
3. Are the Landlords entitled to keep the Tenant's security deposit?

### Background and Evidence

This fixed term tenancy started on October 1, 2008 and was to expire on September 30, 2009, however it ended on April 14, 2009 when the Tenant gave his notice and moved out. Rent was \$1,480.00 per month. The Tenant paid a security deposit of \$740.00 on September 23, 2008.

The Landlords' agent said that although the rental unit was advertised and shown by rental agents shortly after the Tenant moved out, it could not be re-rented until September 1, 2009. The Landlords' agent admitted that the rent was not reduced in an attempt to re-rent it, however she claimed that other incentives were offered such as a shorter, 6 month lease and free parking. Consequently, the Landlords sought to recover 4 months of lost rental income.

The Landlords also sought to recover liquidated damages of \$740.00 pursuant to a term of the tenancy agreement as well as NSF fees of \$50.00 for the Tenant's returned rent cheque for April 2009.

## Analysis

Section 45(2) of the Act says that a tenant of a fixed term tenancy cannot end the tenancy earlier than the date set out in the tenancy agreement as the last day of the tenancy. If a tenant ends a tenancy earlier, they may have to compensate the landlord for a loss of rental income that he incurs as a result. Section 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible **at a reasonable economic rent** in order to minimize a loss of rental income (see RTB Policy Guideline #5).

Although there is ample evidence that the Landlords were advertising all of the vacancies on their rental properties, I find that they did not take adequate steps to mitigate their losses in this case. In particular, I find that two months would have been a reasonable period of time to re-rent the rental unit had the Landlords reduced the asking amount of rent. For example, had the Landlords accepted \$1,300.00 per month for the remaining 5 months of the tenancy, they would only have suffered a loss of rental income of \$900.00 rather than the \$5,920.00 they incurred for not renting it at all for 4 months. Consequently, I find that the Landlords are entitled to recover a loss of rental income for 2 months or \$2,960.00.

RTB Policy Guideline #4 (Liquidated Damages) states that in order for a liquidated damages clause to be enforceable, it must be a genuine pre-estimate of loss at the time the agreement is entered into. The agent for the Landlords claimed that the liquidated damages amount in this case is a genuine pre-estimate of the Landlords' costs of advertising the rental unit in a number of newspaper and online publications as well as to have rental agents available on site to show the vacant units. Although the amount claimed by the Landlords is fairly significant, I find that the Landlords spend a great amount on advertising. Consequently, I find that the Landlords are entitled to recover \$740.00 as liquidated damages.

In the absence of any evidence to corroborate the Landlords' claim that they incurred NSF fees of \$50.00 for a returned rent cheque for April, 2009 that part of the Landlord's claim is dismissed. As the Landlords have been partially successful in this matter, I find that they are entitled to recover one-half of their filing fee or \$50.00. I order the Landlords pursuant to s. 38(4) of the Act to keep the Tenant's security deposit plus accrued interest in partial payment of the damage award. The Landlords will receive a monetary order for the balance owing as follows:

Loss of rental income:	\$2,960.00
Liquidated damages:	\$740.00



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Filing fee:	<u>\$50.00</u>
Subtotal:	\$3,750.00
Less: Security deposit:	(\$740.00)
Accrued interest:	<u>(\$3.03)</u>
Balance owing:	\$3,006.97

## Conclusion

A monetary order in the amount of **\$3,006.97** has been issued to the Landlords and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: August 27, 2009.

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Dispute Resolution Officer