



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes:

MNDC, MND, MNR, FF

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for damage to the rental unit; a monetary Order for unpaid rent; a monetary Order for money owed or compensation for damage or loss; and to recover the filing fee from the Tenant for the cost of 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 to me.

### Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for loss of revenue that resulted from the premature end to a fixed term tenancy agreement; for compensation for damages to the rental unit and for changing the locks; and to recover the filing fee for this Application for Dispute Resolution from the Tenants, pursuant to sections 67 and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The Landlord submitted a copy of a tenancy agreement that indicates the parties entered into a fixed term tenancy that was scheduled to begin on September 01, 2010 and end on February 28, 2010; and that the Tenants were required to pay monthly rent of \$2,500.00 on the first day of each month. The tenancy agreement was signed by the Landlord and both Tenants.

The Landlord and the Tenants agree that on November 30, 2009 the Tenants provided the Landlord with written notice of their intent to vacate the rental unit on December 15, 2009. The Tenants contend that they vacated the rental unit on December 15, 2009 and that they returned the keys to the rental unit on December 18, 2009. The Landlord contends that they vacated the rental unit on December 18, 2009 and that they returned the keys to the rental unit on December 18, 2009.

The Landlord is seeking compensation for loss of revenue for January of 2010, in the amount of \$1,250.00, as the Landlord retained the security deposit of \$1,250.00 in payment for rent from January. The Landlord is seeking compensation for loss of revenue for February of 2010, in the amount of \$2,500.00, which is the amount of rent the Tenants would have paid if the tenancy had continued until the end of February.

The Landlord stated that she advertised the rental unit in the Victoria Times Colonist and on two popular websites on, or about, December 01, 2010, and that she continued to advertise the unit until she located new tenants. She stated that she was able to re-rent the unit for March 01, 2010.

The Landlord is claiming compensation, in the amount of \$500.00, for liquidated damages. The tenancy agreement clearly indicates that the Tenants agree to pay administration costs of \$500.00 if they end the fixed term tenancy prematurely.

The Landlord is claiming compensation, in the amount of \$22.38, for repairing an exterior solar light, which the female Landlord was accidentally broken when they were moving into the rental unit. The Landlord submitted a computer generated document that shows a solar light can be purchased for \$19.98 plus tax. The Landlord stated that she purchased a superior solar light so she did not submit a receipt for the replacement item she purchased.

The Landlord is claiming compensation, in the amount of \$222.19, for the cost of replacing five lock sets in the rental unit. The Landlord and the Tenants agree that the Tenants were given six keys to the rental unit at the beginning of the tenancy and that they only returned five keys at the end of the tenancy.

The Landlord stated that she replaced all of the lock sets with lock sets she had in her possession, as she felt the security of the rental unit had been compromised because one key had not been returned. The Tenants stated that they lost one of the keys, although they do not feel the security of the rental unit was compromised by that loss.

The Landlord submitted an email from a locksmith that indicates the price of a lock cylinder is \$27.00 and it costs \$2.23 for each key.

### Analysis

I find that the Tenants entered into a tenancy agreement with the Landlord that required the Tenants to pay monthly rent of \$2,500.00 on the first day of each month. I find that this fixed term tenancy began on September 01, 2009 and was scheduled to end on February 28, 2010.

I find that the Tenants did not comply with section 45(2) of the *Act* when they ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement. I therefore find that the Tenants must compensate the Landlord for any

losses the Landlord experienced as a result of the Tenants' non-compliance with the *Act*, pursuant to section 67 of the *Act*.

In these circumstances, I find that the Tenants must pay \$1,250.00 to the Landlord for the loss of revenue that the Landlord experienced in January of 2010 and \$2,500.00 for the loss of revenue that the Landlord experienced in February of 2010. In reaching this conclusion I did not consider the Tenants' concerns about deficiencies with the rental unit, none of which were so severe that the home could have been considered uninhabitable.

I find that there is a liquidated damages clause in the tenancy agreement that was signed by the Tenants, that requires the Tenants to pay \$500.00 to the Landlord if they prematurely end this fixed term tenancy. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement.

The amount of liquidated damages agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into. I find that \$500.00 is a reasonable estimate given the expense of advertising a rental unit; the time a landlord must spend showing the rental unit and screening potential tenants; and the wear and tear that moving causes to residential property. When the amount of liquidated damages agreed upon is reasonable, a tenant must pay the stipulated sum even where the actual damages are negligible or non-existent. Generally liquidated damage clauses will only be struck down when they are oppressive to the party having to pay the stipulated sum, which I do not find to be the case in these circumstances. On this basis, I find that the Landlord is entitled to collect liquidated damages of \$500.00.

I find that the Tenants failed to comply with section 37(2)(a) of the *Act* when they failed to repair the solar light that was broken during this tenancy. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenants' failure to comply with the *Act*, which in these circumstances was \$22.37, which includes 12% for taxes.

Section 37(2)(b) of the *Act* requires tenants to return all the keys or other means of access that are in the possession or control of the tenant and that will allow access to and within the residential property. I find that the Tenants did comply with section 37(2) of the *Act* when they returned the only five keys to the rental unit that they had in their possession at the end of the tenancy.

I find that the Tenants failed to comply with section 37(2)(a) of the *Act* when they failed to return six keys to the Landlord at the end of the tenancy, given they were provided with six keys at the start of the tenancy. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenants' failure to comply with this section of the *Act*, which in these circumstances was \$2.23 to copy one key.

Section 67 of the *Act* authorizes me to order a tenant to pay money to a landlord if the landlord suffers damages from a tenant's failure to comply with the *Act*. I am aware of nothing in the *Act* that prohibits tenants from losing a key to the rental unit. As I cannot conclude that the Tenants failed to comply with the *Act* when they lost a key to the rental unit, except as has been previously discussed, I find that I cannot award the Landlord compensation for the cost of replacing the locks in the rental unit.

In reaching this conclusion I found that I could not conclude that the loss of key significantly "damaged" this rental unit or rendered it unsafe. As the Landlord has provided no evidence to show that a third party is in possession of the lost key or that the key can easily be associated to this rental unit, I cannot conclude that a lost key significantly impacts the physical security of this rental unit.

Although section 25(1) of the *Act* requires landlords to rekey or other alter locks on a rental unit so that keys or other means of access given to a previous tenant do not provide access to the rental unit and to pay for the cost of those changes, the landlord is only obligated to do this if the new tenant requests the change at the beginning of the tenancy. In these circumstances I have no evidence to conclude that the Landlord was obligated to change the locks and I do not find that it was reasonable or necessary to change them. On this basis, I dismiss the Landlord's claim for compensation for changing the locks.

I find that the Landlord's application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenants for the cost of this Application for Dispute Resolution.

### Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$4,324.60, which is comprised of \$3,750.00 for loss of revenue, \$500.00 in liquidated damages; \$24.60 in damages, and \$50.00 for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the balance of \$4,324.60. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, 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: December 03, 2010.

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Dispute Resolution Officer