



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, MND, FF and O

### Introduction

This hearing was convened on the landlord's application for a Monetary Order for unpaid rent, liquidated damages, damage to the rental unit and recovery of the filing fee for this proceeding after the tenants left the fixed term rental agreement prior to its expiry.

### Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for the rent and damages and losses arising from a breach of the fixed term rental agreement?

### Background, Evidence and Analysis

This tenancy began on October 1, 2010 under a fixed term rental agreement set to end on September 30, 2011. Rent was \$1,500 per month and the tenant paid the first and last month's rent but no security deposit.

On September 22, 2011, the parties signed a one-year extension to the agreement under which an additional tenant was added and the rent increased \$100 per month to \$1,600, which the tenant now submits was an illegal rent increase.

During the hearing, the landlord gave evidence that the original tenant had telephoned him on March 1, 2012 to advise that the tenants wished to vacate the rental unit on April 30, 2012. The landlord said he reminded the tenant of a two-month notice clause in the rental agreement and cautioned her then and by letter of March 6, 2012 that notice must be provided in writing.

He stated that the only notice he received was by fax and it was conditional on his waiving the liquidated damages clause and accepting the April 30, 2012 end date which he declined.

I note that at this point in the hearing, I had advised the landlord that requiring the last month's rent in advance is not permitted under the *Act*, a moot point as the payment had already been applied to the rent for April 2012. Similarly, I advised the tenant that the \$100 additional rent beginning October 1, 2011 did not constitute an illegal rent increase as she had signed the extension to the agreement which included the additional tenant.

In any event, the tenants vacated the rental unit on April 30, 2012 and the landlord gave evidence that he was not able to place new tenants in the rental unit under June 1, 2012.

The landlord claims, and I find as follows:

**Rent for May 2012 - \$1,600.** Section 45 of the *Act* provides that a tenant in a fixed term rental agreement may only give notice to end the tenancy on a date that is not before the end of tenancy date set by the agreement which was September 30, 2012 in the present case. In addition, such notice must be in writing and must include prescribed information set out at section 52 of the *Act*. In this case, the tenant never did provide such notice. The tenant stated she saw persons about the rental unit in May and surmised it must have been rented, but I accept the landlord's evidence that the activity would have been workers or parties looking at the property. I find that the tenant is responsible for the rent for May 2012 and this claim is allowed in full.

**Liquidated damages - \$3,000.** Item 4 of the *Resident Tenancy Policy Guidelines* states, in part, that:

"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 agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. In considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into."

As a rule of thumb, a genuine pre-estimate of the cost of finding new tenants for a rental unit is in the order of one-half month's rent, but varies somewhat depending on a

number of factors. However, given that the present claim for \$3,000 was four times the norm at the time it was set, I must find that it constitutes a penalty and that it is, therefore, unenforceable. The claim is dismissed.

**Carpet cleaning - \$150.** The landlord gave evidence that the tenants had added a second dog to the rental unit without his consent, and as a result, he said the carpets were stained as verified by photographic evidence. He said his efforts to remove urine odours with a rented cleaner had failed and he then engaged a professional carpet cleaner to do the work. While the landlord had not submitted a receipt for the carpet cleaning, on the basis of the photographic evidence and the uncontested evidence of the two pets, I find the claim to be patently reasonable and it is allowed.

**Filing fee - \$50.** As the application has substantially succeeded on its merits, I find that the landlord is entitled to recover the filing fee for this proceeding from the tenants.

Thus, I find that the tenants owe the landlord an amount calculated as follows:

Rent for May 2012	\$1,600.00
Filing fee	50.00
<b>TOTAL</b>	<b>\$1,800.00</b>

### Conclusion

The landlords' copy of this decision is accompanied by a Monetary Order for **\$1,800.00**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

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: July 06, 2012.

---

Residential Tenancy Branch