



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Colliers MacAulay Nicolls Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, MNSD and FF

### Introduction

This hearing was convened on the landlord's application of January 4, 2013 seeking a monetary award for loss under the rental agreement or legislation, liquidated damages, damage to the rental unit, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off after the tenant left the fixed term agreement early.

### Issue(s) to be Decided

This matter requires a decision on whether the landlord is entitled to monetary award for the claims submitted and in what amounts.

### Background, Evidence and Analysis

This tenancy began on June 1, 2012 under a fixed term rental agreement set to end on May 31, 2013. Rent was \$1,100 per month and the landlord holds a security deposit of \$550, paid at the beginning of the tenancy. As a matter of note, this had originally begun as a co-tenancy, but the other party had left the tenancy earlier.

During the hearing, the parties concurred that the tenant had given the landlord written notice dated December 1, 2012 but served on December 4, 2012 that he would be leaving the tenancy on December 31, 2012.

The landlord submitted the following claims on which I find as follows:

**Rent/loss of rent for January 2013 - \$550.00.** The landlord had originally claimed \$1,100 for loss of the full rent for January 2013, but had been able to find a new tenant for January 15, 2013 and was able to reduce the claim accordingly. Section 7 of the *Act* states that, if either party to a rental agreement suffers a loss due to the other's breach of the rental agreement or legislation, the non-compliant party must compensate the other for the loss. Section 45 of the *Act* states that a tenant's notice to end a fixed term agreement cannot take effect before the end of tenancy stated on the agreement. In the present matter, I find that the landlord's loss was a result of the tenant's breach of the fixed term agreement and that the landlord acted reasonably in attempting to minimize the loss. Therefore, this claim is allowed in full.

**Liquidated damages - \$550.** Under clause 6 of the rental agreement, the parties agreed that if the tenant left the fixed term agreement early, the landlord would be entitled to claim liquidated damages, an amount based on a genuine estimate of the administrative costs of finding new tenants. I find that the amount falls within the acceptable range for liquidated damages and the claim is allowed.

**Paint touch up - \$70.** Both parties participated in the move-out condition inspection and concur that the newly renovated rental unit had been left with scratches on two walls. While the tenant found the claim to be higher than expected, the landlord stated that it was less than actual cost. The claim is allowed.

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

**Security deposits – (\$550).** As authorized under section 72 of the *Act*, I hereby order that the landlord retain the security and pet damage deposits in set off against the balance owed.

Thus, I find that the landlord is entitled to a monetary award calculated as follows:

<b>Award to Landlord</b>	
Rent/loss of rent for January 2013	\$ 550.00
Liquidated damages	550.00
Paint touch up	70.00
Filing fee	<u>50.00</u>
Sub total	\$1,220.00
Less retained security deposit	- 550.00
<b>TOTAL (Balance remaining owed to landlord)</b>	<b>\$ 670.00</b>

### Conclusion

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for **\$670.00** 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: March 26, 2013

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Residential Tenancy Branch

