



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Linquist Enterprises Ltd. and Prudential Sterling Realty, Agent  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss, for authority to retain the tenant's security deposit and pet damage deposit, and for recovery of the filing fee.

The landlord appeared; the tenant did not appear.

The landlord testified that he served the tenant with the Application for Dispute Resolution and Notice of Hearing by registered mail on March 25, 2013. The landlord supplied testimony of the tracking number of the registered mail.

I find the tenant was served notice of this hearing in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the tenant's absence.

The landlord's agent was provided the opportunity to present his evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary issue*-After the hearing, the landlord hand delivered documents pertaining to testimony he had provided at the hearing. The landlord said these documents were faxed to the Residential Tenancy Branch ("RTB") the day prior to the hearing; however these documents were neither in the file or uploaded into the system on the day of the hearing.

Although I did not request these documents, I have now reviewed the documents prior to making this Decision.

Issue(s) to be Decided

Is the landlord entitled to retain the tenant's security deposit and pet damage deposit in satisfaction of their monetary claim for loss of rent revenue and management fees and to recover the filing fee?

Background and Evidence

The landlord submitted evidence that the tenant signed a tenancy agreement on February 18, 2013, with an effective start date of April 1, 2013, that monthly rent was \$1250 and that the tenant paid a security deposit and a pet damage deposit of \$625 each. The landlord has retained both deposits.

The landlord submitted further evidence that they received a written notice from the tenant on March 17, 2013, informing the landlord that she would not be moving in at all and providing her forwarding address.

The landlord said that they began immediately to advertise the rental unit, at the same monthly rent as the tenant was to pay, and secured another tenant for the rental unit, for April 1, 2013.

The landlord said, however, that they were unable to rent the rental unit for the same monthly rent, as the new tenants negotiated the amount of \$1175. The landlord made the decision to rent the rental unit at \$1175 per month rather than have the rental unit sit empty.

The landlord is requesting the rent difference of \$75 per month for the length of the one year fixed term, in the amount of \$900.

Additionally, the landlord's monetary claim includes \$300 for a management fee for re-renting, a management fee of \$150 for applying for dispute resolution, and the filing fee of \$50.

In explanation, the landlord's agent said that he works for the management company who represents the owner of the residential property. As such, the management company charges the owners for their time involved with this rental property.

The landlord submitted a copy of the management contract, the tenancy agreement, a letter from the tenant with a forwarding address, a letter from the tenant involving a possible settlement of the issues, and letter in return to the landlord. I note that the settlement offer of the tenant requested that the landlord cancel this hearing.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

*Rent difference-* Section 45 (2) of the Residential Tenancy Act requires a tenant to give notice to end the tenancy that is, among other things, not earlier than the date specified in the tenancy agreement as the end of the tenancy, in this case the end of the fixed term being March 31, 2014.

I find the landlord and the tenant entered into a valid, enforceable tenancy agreement. Therefore the tenant was responsible for paying rent, beginning April 1, 2013, according to the terms of the agreement, whether she moved in or not, and that she failed to do so.

I find the landlord sufficiently minimized their loss as they secured a new tenant beginning the same month as this tenancy was to begin, and I accept that to be able to minimize their loss, they were compelled to accept a lower monthly rent.

Residential Tenancy Policy Guideline #3 states that, as to damages, a landlord may be compensated for the difference between what he/she would have received from the defaulting tenant and what he/she was able to re-rent the premises for the balance of the un-expired term of the tenancy.

I therefore find the landlord has proven their claim for loss of rent revenue for the balance of the tenancy agreement in the amount of \$900 (\$75 for 12 months, April 2013 through March 2014).

In relation to the landlord's claim for management fees, I find that the landlord/owner has chosen to incur costs that cannot be assumed by the tenant. The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of Act and not for costs incurred to conduct a landlord's business, such as hiring a management company. Therefore, I find that I do not have authority to award the landlord management fees, as they are not costs enumerated as recoverable under the Act. I therefore dismiss their monetary claim for \$300 for management fees in re-renting and \$150 for costs for filing for dispute resolution.

I award the landlord recovery of their filing fee of \$50, pursuant to section 72 of the Act.

Due to the above, I find the landlord has proven a total monetary claim of \$950, comprised of loss of rent revenue for the length of the fixed term of \$900 and the filing fee of \$50.

I must now consider the issue of the security deposit and the pet damage deposit held by the landlord.

Under section 38 (1)(d), I find the landlord properly filed an application claiming against the security deposit for their loss of rent revenue; however, pursuant to section 38 (7), a pet damage deposit may be used only for damage caused by a pet.

As the tenant never moved into the rental unit and the landlord has not claimed for damage caused by a pet, I therefore find that the landlord possessed no such right to make a claim against the pet damage deposit and was required to return the tenant's pet damage deposit within 15 days and failed to do so.

Therefore pursuant to section 38(6)(b), the landlord must pay the tenant double the amount of the pet damage deposit of \$625, or \$1250.

I direct the landlord to retain the tenant's security deposit of \$625 in partial satisfaction of their monetary award of \$950. I also direct the landlord to retain \$325 from the tenant's pet damage deposit, which has been doubled, in full satisfaction of their monetary award.

I find the tenant is entitled to a monetary award of \$925, which is the balance due from her pet damage deposit, which has been doubled to \$1250, less the balance of the landlord's monetary award of \$325.

### Conclusion

The landlord's application for dispute resolution for monetary compensation has been granted in part and dismissed in part as I have awarded the landlord monetary compensation in the amount of \$950.

The tenant is granted a monetary award of \$925. I therefore grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act in the amount of \$925, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

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* and is being mailed to both the applicant and the respondent.

Dated: June 19, 2013

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Residential Tenancy Branch

