



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDC, MNSD, FF

### Introduction

This hearing concerns the landlord's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. The landlord's agent attended and gave affirmed testimony.

Despite service of the application for dispute resolution and notice of hearing (the "hearing package") by way of registered mail, the tenant did not appear. Evidence submitted by the landlord includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the item was "unclaimed by recipient."

### Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the fixed term of tenancy was from July 1, 2013 to June 30, 2014. Monthly rent of \$1,100.00 was due and payable in advance on the first day of each month, and a security deposit of \$550.00 was collected. However, after being given keys to the unit, the tenant did not take possession and no rent was paid for July 2013. The landlord concluded that the tenant had abandoned the tenancy and, accordingly, the locks were rekeyed.

The tenant did not apparently dispute the landlord's conclusion, and by way of text message on July 9, 2013 the tenant requested the return of her security deposit and informed the landlord of her forwarding address. Thereafter, new renters were found for

the unit effective July 15, 2013, and the landlord filed an application for dispute resolution on July 16, 2013.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Section 45 of the Act addresses **Tenant's notice**, in part as follows:

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 7 of the Act speaks to **Liability for not complying with this Act or a tenancy agreement**:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord's agent, the various aspects of the landlord's claim and my findings around each are set out below.

**\$550.00:** *½ month's unpaid rent for July 2013*

I find that the tenant's method of ending the fixed term tenancy does not comply with the applicable statutory provisions set out above. Further, I find that the landlord undertook to mitigate the loss of rental income by advertising for new renters in a timely fashion. Accordingly, I find that the landlord has established entitlement to the full amount claimed.

**\$169.40:** *locksmith*

Arising from the tenant's failure to return all unit keys in her possession to the landlord, I find that the landlord has established entitlement to the full amount claimed.

**\$9.97 + \$9.97:** *registered mailing costs*

Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the landlord's application to recover the costs arising from registered mail is hereby dismissed.

**\$550.00 + \$240.00:** *administrative costs*

Residential Tenancy Policy Guideline # 4 addresses "Liquidated Damages," and provides in part as follows:

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.

I find that the administrative costs claimed by the landlord are "liquidated damages." In the absence of any evidence that the tenancy agreement or any addendum(s) made specific provision for the assessment of liquidated damages, this aspect of the application is hereby dismissed.

**\$50.00:** *filing fee*

As the landlord has achieved a significant measure of success with the application, I find that the landlord has established entitlement to recovery of the full filing fee.

**Sub-total: \$769.40**

I order that the landlord retain the security deposit of **\$550.00**, and I grant the landlord a **monetary order** for the balance owed of **\$219.40** (\$769.40 - \$550.00).

### Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$219.40**. Should it be necessary, this order may be served on the tenant, filed in the 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: October 21, 2013

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Residential Tenancy Branch

