



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding COLUMBIA PROPERTY MANAGEMENT LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with a landlord's application for a Monetary Order for loss of rent, liquidated damages; and, authorization to retain the tenants' security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and Procedural Matters

The landlord submitted that a hearing package was sent to each tenant via registered mail using a forwarding address provided by the female tenant in an email. The hearing package addressed to the female tenant was picked up but the package addressed to the male tenant was returned as unclaimed. The tenants are husband and wife. The female tenant stated that her husband was out of the province when she received her hearing package but that she did not see a notice card for her husband. Both tenants were in attendance at the hearing and in speaking with the male tenant he confirmed that his wife shared her package with him, that he was aware that he is a named party to this dispute, that he is aware of the claims against them, and that he had no objection to being named as a respondent in this proceeding. The male tenant also stated that his wife would speak on behalf of both of them. Therefore, I deemed the male tenant sufficiently served with notification of this proceeding pursuant to the authority afforded me under section 71 of the Act.

During the hearing, the landlord stated that the landlord was prepared to reduce the claim against the tenants to reflect two months of loss of rent rather than the four months that remained in the fixed term during which time the rental unit remained vacant in recognition of the many vacancies in the residential building and to avoid causing undue hardship for the tenants. As the amendment is beneficial for the tenants I have amended the landlord's claim accordingly.

Issue(s) to be Decided

1. Is the landlord entitled to the amounts claimed, as amended?
2. Is the landlord authorized to retain the tenants' security deposit?

Background and Evidence

The parties executed a written tenancy agreement that indicates the tenancy commenced on December 1, 2014 for a fixed term of six months set to expire May 31, 2015. The landlord collected a security deposit of \$312.50 and the tenants were required to pay rent of \$625.00 on the 1<sup>st</sup> day of every month.

On December 23, 2014 the tenant delivered a letter to the landlord's office to give notice of their intent to end the tenancy effective January 31, 2015. On January 2, 2015 the landlord issued a letter to the tenants to advise them that they were bound by a fixed term tenancy agreement and that they would be responsible for a lease breaking fee and rent until such time the unit was re-rented or the remainder of the fixed term. The tenant stated that she did not receive the letter until she picked up the hearing package. The tenant also stated that the rental unit was vacated on January 6, 2015.

The landlord determined that the hydro connection to the rental unit was terminated on January 7, 2015 and on January 9, 2015 the tenant confirmed via email that they had vacated the unit on January 6, 2015 and that neither one of them was still in town. The landlord performed a move-out inspection on January 12, 2015 without the tenants present. The keys and fobs were left inside the rental unit. The move-out inspection report also indicates that the rental unit was left in a clean and undamaged condition.

The landlord seeks compensation for loss of rent for the months of February 2015 and March 2015 in the amount of \$625.00 per month. The landlord testified that the rental unit was vacant until July 6, 2015 but limited the claim for loss of rent as indicated earlier in this decision. The landlord submitted that the residential building is of new construction and that there are many rental units available for rent at varying amounts for different lay-outs. The landlord advertised units available in the building, including the subject unit, in many ways: a sidewalk sign; newspaper; hand-outs, the landlord's website; and, two other websites used to advertise rental units. The landlord provided an example of the advertising efforts made in their evidence package.

In addition to loss of rent, the landlord seeks liquidated damages of \$300.00 as provided in the tenancy agreement. The tenancy agreement provides for a liquidated damages clause under the heading "Breaking Lease Term" and indicates that the landlord may

charge the tenants the sum of \$300.00 should the tenants end the tenancy before the end of the term to cover administration costs of re-renting the premises, not as a penalty, and without limiting the landlord's right to pursue the tenants for loss of rental income.

The tenant submitted that she understood from the landlord's assistant at the time of entering into the tenancy agreement that to end the tenancy they only needed to give one month's notice, which they did, and that the consequence for breaking the lease would be forfeiture of the security deposit. The tenant acknowledged that since receiving the landlord's hearing package she reviewed the tenancy agreement and concurred that it does not reflect the tenants' understanding. The tenant did not deny that they signed the tenancy agreement and initialled the box adjacent to the "Breaking Lease Term".

The tenant stated that she emailed the landlord's assistant in an attempt to get the assistant to acknowledge that she gave the tenants false information at the time of entering the tenancy agreement. The tenant also submitted that she emailed the landlord's agent in an attempt to confirm that "everything was ok" with respect to how the tenancy ended and the response from the landlord was to request the tenants' mailing address, which the tenant provided not knowing the landlord would be suing them.

The tenants submitted that they are unable to pay any of the amounts the landlord is seeking due to their personal financial circumstances. The tenant pointed out that the security deposit the landlord collected was obtained from an organization that assisted them financially and that since the tenancy ended they have stayed in homeless shelters at times.

### Analysis

The Act requires that a tenant pay rent in accordance with the terms of their tenancy agreement. The Act requires that the agreed upon terms be put in writing. It is upon each party to read and understand documents that they sign. The parties executed a written tenancy agreement and I find that written document is the best evidence as to the agreed upon terms. Discussions or negotiations between parties before a tenancy agreement is executed is referred to as "parol evidence" and is generally only admissible when the terms of the agreement are ambiguous. Upon review of the tenancy agreement executed by the parties, I find the terms are clearly expressed and, therefore, enforceable.

Having found the written tenancy agreement signed by the parties to be enforceable, I find the tenants were bound to fulfill their obligations under the tenancy agreement until May 31, 2015. The Act does not permit a tenant to end a fixed term tenancy earlier than the fixed term expiry date by giving a month's notice. The Act does provide for very limited and specific circumstances when a tenant may legally end a fixed term tenancy early; however, I was not presented any evidence to suggest the tenants had the legal right to end the tenancy early.

Where a tenant ends a fixed term tenancy early by vacating the rental unit, the tenant may be held responsible for paying the landlord loss of rent for the remainder of the fixed term provided the landlord took reasonable steps to mitigate any loss of rent. In this case, I find the landlord provided sufficient evidence to demonstrate that rental units in the residential property were actively marketed. Having heard this property was newly constructed with many vacant units of varying lay-outs and rental rates, I find the landlord provided a reasonable explanation as to the reason the subject unit did not re-rent until July 2015. Despite the unit being vacant for the remainder of the fixed term the landlord limited its claim for loss of rent to the two months of February and March 2015 and I find the landlord's reduced claim to be reasonable in the circumstances.

While I am sympathetic to the tenants' financial situation; as I informed the parties during the hearing, a tenant's inability to pay a debt is not a factor in determining the tenant's legal liability to the landlord. Therefore, I have not considered this submission further in making my decision.

Considering all of the above, I find the landlord entitled to recover loss of rent for two months in the amount of \$1,250.00 as requested.

In addition to loss of rent, the landlord requested that I consider the landlord's claim for liquidated damages as provided in the tenancy agreement under the heading "Breaking Lease Term". Residential Tenancy Policy Guideline 4 provides policy statements with respect to claims for liquidated damages. It provides 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 fixed term by the tenant. If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum unless the sum is found to be a penalty. Upon review of the "Breaking Lease Term" of the tenancy agreement, I am satisfied that the sum of \$300.00 represents a genuine pre-estimate of the cost to re-rent the unit as I find the amount stipulated is reasonable and is not a penalty. Therefore, I find the landlord entitled to recover liquidated damages of \$300.00 from the tenants.

As the landlord was successful in this application, I further award the landlord recovery of the \$50.00 filing fee paid for this application.

I authorize the landlord to retain the tenants' security deposit in partial satisfaction of the amounts awarded to the landlord by way of this decision.

In light of the all of the above, I provide the landlord with a Monetary Order in the amount calculated as follows:

Loss of rent	\$1,250.00
Liquidated damages	300.00
Filing fee	50.00
Less: security deposit	<u>(312.50)</u>
Monetary Order	\$1,287.50

To enforce the Monetary Order it must be served upon the tenants and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

#### Conclusion

The landlord has been authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$1,287.50 to serve and enforce as necessary.

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: August 06, 2015

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Residential Tenancy Branch

