



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes FF, MNR, MNSD, MNDC, O

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

### Issue to be Decided

Is either party entitled to a monetary order as claimed?

### Background & Evidence

The landlord's testimony is as follows. The tenancy began on January 15, 2016 and was to be for a fixed term of one year. The tenants were obligated to pay \$1700.00 per month in rent in advance and at the outset of the tenancy the tenants paid an \$850.00 security deposit and a \$150.00 key and fob deposit. The landlord testified that on February 2, 2016 the tenants

showed up at her home and advised that they had moved out of the unit and that they were “breaking the lease”. The landlord testified that the tenants advised her that because the previous tenant was a gang member and involved in crime they could no longer live there. The landlord testified that the tenants did not give her any opportunity to address their concerns. The landlord testified that she was not aware if the previous tenant was involved in any criminal venture. The landlord testified that she had no way of knowing if the tenant had a criminal history. The landlord testified that the previous tenant had excellent references and she had no reason to doubt them.

The landlord testified that she posted an online ad to rent the unit and was successful in renting it out for February 18, 2016. The landlord testified that the unit was left in good condition with no issues. The landlord advised that she is seeking costs incurred for the tenants breaking the lease. The landlord stated that the tenants do not have conclusive proof that the previous tenant is a criminal. The landlord disputes the tenants’ submission that guaranteeing the previous tenant was not a criminal as a material term. The landlord stated the previous tenants name is fairly common and that the tenants are basing their assumptions on second hand information and generalities. The landlord stated that the tenants submitted a print out of pending charges of an individual with the same name as her previous tenant but without any photos or date of birth there is no way to link the two. The landlord testified that the locks to the unit were changed, the fobs were cancelled and new ones issued to the subject tenants. The landlord stated that the tenants had no basis to end the tenancy.

The landlord is applying for the following:

1.	Advertisement costs	\$10.50
2.	Loss of Rent	\$170.00
3.	Loss of income	\$825.00
4.	Mileage costs	\$49.50
5.	Filing Fee	\$100.00
6.		
	Total	<b>\$1155.00</b>

The tenants gave the following testimony. The tenants testified that the landlord misrepresented the property by not being truthful in telling them that a criminal previously lived in the unit. AM testified that she was weary about moving into the unit based on the information she received from the landlord and how the previous tenant ended the tenancy. SL testified that the landlord should have known that the previous tenant was a criminal, simply by doing a google search. AM testified that the concierge at the condo; “believed” the former tenant to be a drug dealer.

The tenants testified that they incurred a great expense to move so quickly. The tenants testified that they felt that someone was accessing their unit and no longer felt safe. The tenants testified that they feel the landlord clearly misrepresented the property to convince them to rent it. The tenants stated that they feel they are entitled to the recovery of one month’s rent, moving costs,

meals, parking fees, the filing fee and aggravated damages as a result of the landlords' misrepresentation.

The tenants are applying for the following:

1.	Return of one month's rent for compensation	\$1700.00
2.	Fees for parking spot	\$60.00
3.	Moving costs	1477.50
4.	Fortis BC	38.04
5.	Meals	\$187.82
6.	Aggravated Damages	\$2000.00
7.	Filing Fee	\$100.00
	Total	<b>\$5563.36</b>

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of each party's claim and my findings around each are set out below.

Section 45(3) of the Act states that if the landlord has breached a material term of the tenancy agreement and failed to correct it within a reasonable period after the tenant gives written notice of the failure, the tenant may end a tenancy effective on a date after the date the landlord receives the notice. The tenant testified that the landlord breached a material term of the tenancy agreement because the landlord misrepresented the unit by telling the subject tenants that the previous tenant was not a gang member or involved in criminal activity.

I find that the tenants did not provide the landlord with a written notice to end the tenancy for breach of a material term, in accordance with the requirements of sections 45(4) and 52 of the *Act*. The tenants agreed that they did not give a written material breach notice to the landlord. The tenants agreed that they showed up to the landlords home on February 2, 2016 and advised that they had already moved out. The tenants stated that there was "no remedy" for the situation and decided to move. The tenants did not provide the landlord with a "reasonable period" of time as per section 45(3) of the *Act* to rectify any potential issues. In addition I also find that the tenants failed to provide sufficient evidence to support their claim that the previous tenant was in fact a gang member or involved in criminal activity. Further to that, the tenants did not provide sufficient evidence that this was a material term of their tenancy agreement. The tenants based their opinion that the previous tenant was a criminal on hearsay and a very general online search without unique and distinguishing details.

Therefore, I find that there was no material breach of the tenancy agreement by the landlord, which would have allowed the tenant to terminate the tenancy prior to the fixed term end date.

Based on that finding, the tenants costs as claimed were a result of their own actions and not those of the landlord, accordingly; I dismiss the tenants application in its entirety.

I address the landlords' claims and my findings as follows.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

#### Loss of Rent and advertising cost

I find that the landlord and tenant entered into a fixed term tenancy.

Subsection 45(2) of the *Act* sets out how a tenant may end a fixed term tenancy:

*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.*

The above provision states that the tenants cannot give notice to end the tenancy before the end of the fixed term. If they do, they may have to pay for rental to the landlord. In this case, the tenant ended the tenancy as of February 15, 2016. I find that the tenants breached the fixed term tenancy agreement. As such, the landlord is entitled to compensation for losses it incurred as a result of the tenant's failure to comply with the terms of her tenancy agreement and the *Act*.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable, to re-rent the premises after receiving written notice that the tenants had already moved out. The landlord posted an advertisement a copy of the cost of the advertisement - \$10.50. The landlord was able to rent the unit for February 18 and incurred a rental loss for three days. Pro-rating the amount of a 30 day period = \$170.00. The landlord has provided

sufficient evidence to support this claim. Based on the above, I find that the landlord is entitled to \$180.50.

Mileage costs to go to the Condo and Loss of Income

The landlord is seeking \$49.50 for mileage to drive to the condo to show potential renters the unit. The landlord is also seeking \$825.00 for loss of income for the time it took her away from her job to show the unit. The landlord did not provide sufficient documentation to support this claim, i.e. mileage log, dates and times of showings, or pay stubs to show loss of income. Based on the insufficient evidence before me, I dismiss this portion of the landlord's application.

As the landlord has been partially successful in their application, they are entitled to the recovery of the \$100.00 filing fee.

Conclusion

The landlord has established a claim for \$280.50. I order that the landlord retain \$280.50 from the security deposit in full satisfaction of the claim. The landlord is to return the remaining \$719.50 to the tenants. I grant the tenants an order under section 67 for the balance due of \$719.50. This order may be 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 03, 2016

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Residential Tenancy Branch