



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNR, MNDC, MNSD, O, FF

### Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has applied for a monetary Order for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent, to retain all or part of the security deposit/pet damage deposit, for "other", and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Landlord stated that on August 19, 2016 the Application for Dispute Resolution, the Notice of Hearing, and the evidence that was submitted to the Residential Tenancy Branch were sent to the Tenant, via registered mail. The Tenant acknowledged the receipt of these documents and the evidence was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

### Preliminary Matter #1

The Landlord and the Tenant agree that this tenancy was the subject of a previous dispute resolution hearing, after which the Landlord was ordered to return the double security deposit/pet damage deposit to the Tenant.

As the security deposit and pet damage deposit have been addressed at a previous dispute resolution proceeding, I decline to consider the Landlord's application to retain all or part of the security deposit/pet damage deposit.

### Preliminary Matter #2

The Application for Dispute Resolution provides a space for a party to briefly describe the issues in dispute. In this area the Landlord declared that she lost costs of "shampooing carpets again and changing lock". I did not notice this entry until after the hearing ended.

The Application for Dispute Resolution directs applicants to include a detailed calculation when they are applying for a monetary Order. The purpose of this direction is to clearly notify the other party of the nature of the claims and the amount of money being claimed for each individual claim. As a detailed calculation was not provided I was not aware that the Landlord was seeking compensation for shampooing the carpets and changing the lock until after the hearing ended.

Although the Landlord submitted a receipt for a lock and an invoice for carpet cleaning, those are not, in my view, sufficient notice to the respondent of amounts claimed. A respondent cannot be expected to review all of the evidence and then speculate on the amounts being claimed by the applicant.

The Application for Dispute Resolution directs applicants to include a Monetary Order Worksheet detailed calculation when they are applying for a monetary Order. The purpose of this worksheet is to clearly notify the other party of the nature of the claims and the amount of money being claimed for each individual claim. As a Monetary Order Worksheet was not provided I was not aware that the Landlord was seeking compensation for shampooing the carpets and changing the lock until after the hearing ended.

As I was unaware during the hearing that the Landlord was seeking compensation for shampooing and changing the lock, I did not prompt the Landlord to address these claims during the hearing. The Landlord did not raise these claims at the end of the hearing when she was given the opportunity to raise issues that had not yet been addressed.

Rule 7.4 of the Residential Tenancy Branch Rules of Procedure stipulates that evidence must be presented by the party who submitted it. This rule requires an applicant to present evidence of each individual claim. Given that participants at these hearings are typically unfamiliar with the dispute resolution process, I typically prompt the parties to present evidence that is relevant to the issues in dispute. The onus is on the applicant to raise relevant issues or claims in circumstances such as these, where I am unaware a particular claim has been made.

As the Landlord did not raise the claims for shampooing the carpets and changing the lock during the hearing, I am unable to render a judgment on those claims. The Landlord retains the right to file another Application for Dispute Resolution in regards to these claims.

#### Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent, lost revenue, and liquidated damages?

### Background and Evidence

The Landlord and the Tenant agree that:

- the parties entered into a fixed term tenancy agreement;
- the tenancy began on September 01, 2015;
- the fixed term of the tenancy was to end on August 31, 2016;
- the Tenant paid a \$650.00 security deposit;
- the Tenant paid a \$50.00 pet damage deposit;
- rent of \$1,300.00 was due by the first day of each month;
- the Tenant still owes \$100.00 in rent for February of 2016;
- on February 01, 2016 the Tenant sent the Landlord a text message, in which he informed the Landlord that he needed to end the tenancy;
- the text message did not inform the Landlord of the date the Tenant intended to vacate the rental unit;
- after receiving the text message the Landlord stated that she would try to find another tenant; and
- the Tenant vacated the rental unit on February 29, 2016.

The Tenant stated that on February 10, 2016 the Landlord informed him, by text message, that she had found a new tenant. The Landlord stated she sent the Tenant a text message in which she told him that she thought she had found a new tenant, although she does not know the date the message was sent. Neither party submitted a copy of this text message.

The Landlord stated that she thinks she started advertising the rental unit in the first or second week of February and that she located a person who she believed would be her new tenant. She stated that sometime near the end of February the prospective tenant informed her that they did not wish to sign a lease so that tenancy did not begin.

The Landlord stated that on the day the Tenant was moving she told him that she did not have a new tenant for March 01, 2016. The Tenant stated that he was not told the Landlord did not have a tenant for March 01, 2016 until he was served with this Application for Dispute Resolution.

The Landlord stated that she was able to find a new tenant for March 15, 2016. The Landlord is seeking lost revenue for the period between March 01, 2016 and March 14, 2016 due to the premature end of the fixed term tenancy.

The Landlord is seeking compensation for unpaid rent from February, in the amount of \$100.00.

The Landlord is seeking compensation for liquidated damages, in the amount of \$1,000.00. The parties agree that there is a clause in the tenancy agreement that

requires the tenant to pay liquidated damages of \$1,000.00 in the event the tenant ends the tenancy before the end of the fixed term.

The Tenant stated that he understood his obligations to the Landlord would end once she re-rented the unit and that he did not understand he would be obligated to pay liquidated damages.

### Analysis

I find that the Tenant entered into a fixed tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,300.00 on the first day of each month. I find that this fixed term tenancy of the tenancy was to end on August 31, 2016.

On the basis of the undisputed evidence that the Tenant still owes \$100.00 in rent for February of 2016, I find that Tenant must pay this amount to the Landlord.

I find that the Tenant did not comply with section 45(2) of the *Act* when he ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement. I therefore find that the Tenant must compensate the Landlord for any losses the Landlord experienced as a result of the Tenant's non-compliance with the *Act*, pursuant to section 67 of the *Act*.

In these circumstances, I find that the Tenant must pay \$750.00 to the Landlord for the loss of revenue that the Landlord experienced between March 01, 2016 and March 14, 2016.

I find that no evidence was submitted to corroborate the Tenant's testimony that the Landlord told him, by text message, that she had found a new tenant for March 01, 2016 or that refutes the Landlord's testimony that she told him that she thought she had found a new tenant for March 01, 2016. In the absence of evidence that clearly establishes the Tenant was told that a new tenant had been found for March 01, 2016, I cannot conclude that the Tenant did not remain obligated to compensate the Landlord for lost revenue for March of 2016.

I find that there is a liquidated damages clause in the tenancy agreement that was signed by the Tenant, which requires the Tenants to pay \$1,000.00 to the Landlord if he ends this tenancy prior to the end of the fixed term tenancy. 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 of liquidated damages agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into. I find that \$1,000.00 is a reasonable estimate given the expense of advertising a rental unit; the time a landlord must spend showing the rental unit and screening potential tenants; and the wear and tear that moving causes to residential property. When the amount of liquidated damages agreed upon is reasonable, a tenant must pay the stipulated sum even where the actual

damages are negligible or non-existent. Generally liquidated damage clauses will only be struck down when they are oppressive to the party having to pay the stipulated sum, which I do not find to be the case in these circumstances. On this basis, I find that the Landlord is entitled to collect liquidated damages of \$1,000.00.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

### Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,950.00, which is comprised of \$750.00 for loss of revenue, \$100.00 for unpaid rent from February of 2016, \$1,000.00 in liquidated damages, and \$100.00 for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Based on these determinations I grant the Landlord a monetary Order for \$1,950.00. In the event the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia 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: February 21, 2017

---

Residential Tenancy Branch