



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord: MNDC MNR MNSD FF  
Tenant: MNSD FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on May 15, 2018.

Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”). Both parties attended the hearing and provided testimony. The Landlord stated that she served her application package and evidence to the Tenants by registered mail. The Tenants acknowledge receiving this package and took no issue with the service of this information. The Tenants stated that they did not serve the Landlord with paper copies of any of their evidence or their cross-application package for dispute resolution.

I find the Landlord has sufficiently served the Tenants with her application and evidence. However, given that the Tenants failed to serve any of their application or their evidence in accordance with the rules of procedure, or in this case at all, I dismiss the Tenant’s cross-application in full, without leave to reapply. Further, any evidence they submitted in response to the Landlord’s application will also not be considered since they did not serve the Landlord with any of their evidence. Despite the issues with their documentary evidence and application package, the Tenants were given the opportunity to present oral evidence during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Landlord entitled to compensation for money owed or damage or loss under the Act?
- Is the Landlord entitled to compensation for unpaid rent or utilities?
- Is the Landlord entitled to keep the security deposit to offset the unpaid rent?

### Background and Evidence

The Landlord stated that she is seeking compensation for liquidated damages. The Landlord pointed to the tenancy agreement and the addendum, where the Tenants agreed to the following term:

“1) Rental Period and Terms of Tenancy: If the Tenant ends the fixed term tenancy before the end of the original term as set out above, the Landlord may, at the Landlord’s option treat this Tenancy Agreement as being at an end. In such an event, the sum of two month’s rent shall be paid by the Tenant to the Landlord as liquidated damages and not as a penalty to cover the administration costs of re-renting the said premises.[...]”

The Landlord stated that the Tenants signed the tenancy agreement on September 19, 2017, starting on October 15, 2017, for a fixed term lease ending October 15, 2018. As per the tenancy agreement, rent was set at \$1,600.00 and was due on the 15<sup>th</sup> of the month. The Landlord collected a security deposit in the amount of \$800.00.

The Landlord is seeking two month’s compensation for liquidated damages, as per the tenancy agreement provided. The Landlord is also seeking an additional \$800.00 for compensation because she had to spend many hours and had to incur some expenses to re-rent the unit.

The Landlord stated that after she entered into the agreement with the Tenants, they began texting her and emailing her in the following weeks, in an attempt to back out of the agreement they signed. The Tenants stated that they decided not to move in together and were having relationship issues. The Landlord stated that she received an email on September 28, 2017, with a typed letter from the Tenants, saying they wanted their security deposit back. In this letter, which was provided into evidence, it lists the Tenants’ forwarding address. The Landlord stated that when she found out the Tenants didn’t want to move in, she was out of the country, and when she returned, she posted an ad online on October 3, 2017, to re-rent the unit. The Landlord stated that she was not able to re-rent the unit until November 1, 2017.

In addition to the liquidated damages (\$3,200.00), and the compensation for having to re-rent the unit (\$800.00), the Landlord is seeking compensation for rent for the month of October 15, 2017, to November 15, 2017 (\$1,600.00).

The Tenants stated that they do not feel it is fair that they have to pay so much. The Tenants stated that they did not read the contract properly before they signed it and did not know they would be on the hook for liquidated damages if they failed to move in. The Tenants stated that the rental market is tight in Vancouver and they feel the Landlord could have easily re-rented the unit right away.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

The Landlord is seeking two month's compensation for liquidated damages, as per the tenancy agreement provided. I note that the Tenants have agreed, in writing, as per the tenancy agreement provided into evidence, that the Landlord be paid two months' rent in compensation if the lease is ended prior to the end of the agreed upon term (October 2018).

Residential Tenancy Policy Guideline 4 provides for liquidated damages. 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.

In this case, I find that the liquidated damages clause in the tenancy agreement is not an enforceable term. The liquidated damages amount of \$3,200.00 does not appear to be a genuine pre-estimate of the Landlord's costs to re-rent the unit. I find that the amount is based on the two times the monthly rent. I find that the structure of the tenancy agreement stipulating the amount of two months' rent is excessive and is a penalty. The Landlord is already entitled to claim for lost rent if the unit is not re-rented. The Landlord's claim for \$3,200.00 is dismissed.

Next, I turn to the Landlord's request for compensation in the amount of \$800.00 for her time and effort to re-rent the unit. In this case, the Landlord stated that she spent many hours showing the suite, posting ads, interviewing prospective tenants, and filling out paperwork in attempt to re-rent the suite as quickly as possible. I find the amount the Landlord is claiming for this part of her application is reasonable. I award the Landlord \$800.00 in compensation for this portion of her application.

Next, I turn to the Landlord's claim for compensation for one month's rent for the period of October 15, 2017, until November 15, 2017. I note that the Tenants signed a one year lease on September 19, 2017, starting on October 15, 2017, for a fixed term lease ending October 15, 2018. As per the tenancy agreement, rent was set at \$1,600.00 and was due on the 15<sup>th</sup> of the month. I also note the Tenant's changed their mind and broke the lease towards the end of September 2017, prior to actually moving in. This put the Landlord in a position where she had to find new renters as soon as possible.

It appears the Landlord posted the ad around October 3, 2017, and ultimately re-rented the unit for November 1, 2017. This left her with a loss of one half month's rent from the Tenant's failure to uphold the lease agreement, move in, and pay rent on October 15, 2017. The Landlord wants to be compensated for \$1,600.00, which is equivalent to one month's rent. However, given that she only lost rent for the period from October 15, 2017, till November 1, 2017, I find her actual loss is only \$800.00 (one half month's rent). I decline to award the full month equivalent to the Landlord and I find the Landlord is only entitled to \$800.00, rather than the \$1,600.00 she was seeking.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was successful in this hearing, I also order the Tenants to repay the \$100.00 fee the Landlord paid to make the application for dispute resolution. Further, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenants.

In summary, I award the Landlord a monetary order as follows:

<b>Claim</b>	<b>Amount</b>
Compensation for time and money spent to re-rent the unit	\$800.00
Lost rent for the period of October 15, 2017, till November 1, 2017.	\$800.00
Filing Fee	\$100.00
<b>Less:</b>	
Security Deposit currently held by Landlord	(\$800.00)
<b>TOTAL:</b>	<b>\$900.00</b>

Conclusion

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$900.00**. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: May 16, 2018

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Residential Tenancy Branch