



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** FFL MNDCL-S MNDL-S MNRL-S

### **Introduction**

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

- a monetary order for unpaid rent, pursuant to section 67;
- a monetary order for money owed or compensation monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

While the landlord's agent, CL ('landlord'), attended the hearing by way of conference call, the tenant did not. I waited until 2:10 p.m. to enable the tenant to participate in this scheduled hearing for 2:00 p.m. The landlord's agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord's agent testified that the tenant was served with the landlord's application for dispute resolution hearing package ('Application') and evidence on November 17, 2017, by way of registered mail. The landlord provided the tracking information in their evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application and evidence on November 22, 2017, five days after its registered mailing.

### **Issue(s) to be Decided**

Is the landlord entitled to monetary compensation for unpaid rent and losses?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### **Background and Evidence**

The landlord's agent testified regarding the following facts. This fixed-term tenancy began on June 1, 2017, and was to end on May 31, 2018. Monthly rent was set at

\$1,650.00, and the landlord collected a security deposit of \$825.00, which the landlord still holds. A copy of the tenancy agreement was included in the landlord's evidence.

The tenant moved out on October 31, 2017 after the landlord issued the tenant a "30 Day Notice to End Tenancy For Cause". This "30 Day Notice" was confirmed by the landlord's agent in the hearing to be in the form of a letter to the tenant, dated September 19, 2017. This letter was included in the landlord's evidence and reads:

*"It has been brought to our attention that further disturbance has been caused to your neighbours due to your loud sexual acts. You also failed to attend to our requirement to add the male occupant application for tenancy....As you have received previous letters regarding this type of disturbance on July 11, August 24, 25, 28, and September 9 and 16, 2017, along with a fine of \$100.00, this is your 30-Day notice to end tenancy...We trust you will acknowledge this and cooperate with the one-month notice to end tenancy by October 31, 2017".*

The tenant had cooperated with this notice, and moved out on the effective date indicated on the notice. The landlord performed both a move-in and move-out inspection, and the tenant provided a forwarding address on the date of the move-out inspection.

The landlord requested monetary compensation as follows:

Cleaning Fee as agreed to by the tenant on the move-out inspection report	\$87.50
Fine for noise complaint by strata	100.00
Liquidated Damages for breaking the fixed-term agreement	825.00
Loss of Rental Income for November 2017	366.70
<b>Total Monetary Award Requested</b>	<b>\$1,379.20</b>

The landlord testified that the tenant had agreed to the cleaning fee, as shown on the move-out inspection report provided in the landlord's evidence. The landlord also is requesting reimbursement of the \$100.00 fine imposed by the strata for noise complaints. The landlord submitted a document titled "ledger" that indicates a fine for noise complaints in the amount of \$100.00. The landlord provided a copy of the invoice for cleaning in the amount of \$87.50 in support of their application.

The landlord submitted a copy of the tenancy agreement which indicates a \$825.00 "liquidated damages" clause. The clause reads: *"If the Tenant ends or gives notice to*

*end the tenancy before the end of the original Term of this Lease, or any subsequent fixed term, or if the Tenant is in breach of the Residential Tenancy Act or a material term of this Lease that causes the Landlord to end the tenancy before the end of the original term...then the Tenant must pay the sum of \$825.00 to the Landlord as liquidated damages”.*

The landlord was able to re-rent the unit as of November 9, 2017, for the same monthly rent. The landlord provided evidence to support that they had re-rented the unit as soon as possible, and is seeking a loss of rental income in the amount of \$366.70 for November 2017.

### **Analysis**

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss

Section 44 of the *Residential Tenancy Act* reads in part as follows:

**44** (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [*tenant's notice*];

(i.1) section 45.1 [*tenant's notice: family violence or long-term care*];

(ii) section 46 [*landlord's notice: non-payment of rent*];

(iii) section 47 [*landlord's notice: cause*];

(iv) section 48 [*landlord's notice: end of employment*];

(v) section 49 [*landlord's notice: landlord's use of property*];

(vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

- (c) the landlord and tenant agree in writing to end the tenancy;
- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended;
- (g) the tenancy agreement is a sublease agreement.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Section 52 of the *Act* requires that the above notices referenced in section 44(1)(a) of the *Act* complies with the *Act*, specifically, that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) state the grounds for ending the tenancy, and (e) be in the approved form.

Section 47 of the Act allows the landlord to end the tenancy for cause:

#### **Landlord's notice: cause**

**47** (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- (a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- (b) the tenant is repeatedly late paying rent;
- (c) there are an unreasonable number of occupants in a rental unit;
- (d) the tenant or a person permitted on the residential property by the tenant has
  - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
  - (iii) put the landlord's property at significant risk;
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
  - (i) has caused or is likely to cause damage to the landlord's property,
  - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
  - (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;
- (g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) *[obligations to repair and maintain]*, within a reasonable time;
- (h) the tenant
  - (i) has failed to comply with a material term, and
  - (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;
- (i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 *[assignment and subletting]*;
- (j) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;
- (k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;
- (l) the tenant has not complied with an order of the director within 30 days of the later of the following dates:

- (i) the date the tenant receives the order;
  - (ii) the date specified in the order for the tenant to comply with the order.
- (2) A notice under this section must end the tenancy effective on a date that is
  - (a) not earlier than one month after the date the notice is received, and
  - (b) 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.
- (3) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Although the landlord communicated to the tenant that the tenant was being issued a “30 day Notice to End Tenancy for Cause”, I find the landlord’s letter to the tenant did not comply with section 52(e) of the *Act*. Therefore, the letter included in the landlord’s evidence is not considered a valid notice under section 47 of the *Act*.

I find that the tenant moved out on the date requested by the landlord, and not as a result of receiving a 1 Month Notice pursuant to Section 47 of the *Act*. I find that the notice given to the tenant does not comply with section 52 of the *Act*. On this basis, I am not allowing the landlord’s application for liquidated damages as the tenant agreed to vacate the rental unit and moved out as requested by the landlord in their letter, and not on the basis of a Notice given under section 47 of the *Act*. I find that the landlord had not provided sufficient evidence to demonstrate that the tenant had failed to comply with the tenancy agreement, or the *Act* in moving out on October 31, 2017. The landlord’s monetary claim of \$825.00 is therefore dismissed without leave to reapply.

The landlord also made a claim to recover the \$100.00 in strata fines for noise complaints. Although the landlord submitted a document titled “ledger” which indicates a \$100.00 fine, the landlord did not provide documentation or other supporting evidence like witness testimony or correspondence from the strata or management company to support that the \$100.00 fine was imposed due to the actions of the tenant. On this basis, I am dismissing this portion of the landlord’s monetary claim without leave to reapply.

As the landlord failed to provide sufficient evidence to demonstrate that the tenant had ended this tenancy contrary to sections 44 and 45 of the *Act*, I am dismissing the

landlord's monetary claim for loss of rental income. I find that the landlord had failed to provide proper notice under section 47 of the *Act*, and any rental losses suffered by the landlord relating to this fixed-term tenancy is due to the landlord's actions, and not the tenant's.

I find the landlord provided undisputed evidence to support that the tenant had agreed to have a cleaning fee deducted from his security deposit. The landlord continues to hold the tenant's security deposit of \$825.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenant's security deposit of \$825.00 in satisfaction of the cleaning fee.

As the landlord was not successful with the majority of their monetary claim, I am dismissing the landlord's application to recover the filing fee for this application.

### **Conclusion**

I allow the landlord to retain \$87.50 of the tenant's security deposit for the cost of cleaning, as agreed to by the tenant. The remaining portion of the landlord's application is dismissed without leave to reapply.

I issue a Monetary Order in the amount of \$737.50 in the tenant's favour for the return of the remaining portion of the security deposit, which the landlord still holds.

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: June 7, 2018

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Residential Tenancy Branch