



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC MNR FF

### Introduction

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

- a Monetary Order pursuant to section 67 of the *Act*;
- a return of the filing fee pursuant to section 72 of the *Act*.

Tenant C.A. (the "tenant") and landlord, L.T., (the "landlord") attended the hearing. Both parties were given a full opportunity to be heard, to present their sworn testimony and to make submissions.

The tenant said that she had not received the landlords' application for dispute resolution or evidentiary package and explained that she had only become aware of the hearing because of a reminder email she received from the *Residential Tenancy Branch* on June 4, 2018. The landlord said that she sent individual copies to the named tenants by way of Canada Post Registered Mail on November 17, 2017 and that both packages were unclaimed. The landlord provided copies of the individual Canada Post Registered Mail tracking numbers and provided photos of the packages along with their receipts as part of her evidentiary hearing. The tenant confirmed that she was living at the address provided by the landlord when the packages were sent but said that no packages had arrived at that address. Pursuant to sections 88, 89 & 90 of the *Act*, the tenants are deemed served with these documents on November 22, 2018, five days after their service.

### Issue(s) to be Decided

Are the landlords entitled to a monetary award? Can the landlord recover the filing fee?

### Background and Evidence

The landlord explained that this tenancy began on September 15, 2016 and ended on November 1, 2017. Rent was \$3,070.00 and a security deposit of \$1,485.00 paid at the outset of the tenancy was surrendered to the landlords by the tenants at the conclusion of the tenancy.

The landlord is seeking a monetary award of \$6,040.00 representing a \$2,970.00 pursuant to liquidated damages clause in the tenancy agreement and \$3,070.00 in unpaid rent for November 2017.

The landlord alleged that the tenants provided very late notice of their intention to vacate the rental unit. The landlord said that she only discovered on October 31, 2017 that the tenants intended to vacate the suite on November 1, 2017. The landlord said that because of this late notice, she was unable to re-rent the suite until December 15, 2017. The landlord testified that on November 1, 2017 she placed ads with Craigslist and Kijiji attempting to find a new tenant; however, she said that because of the poor weather there was not much interest in viewing the apartment so she was forced to lower the price and re-rent it for \$3,000.00. As mentioned above, the landlord was also seeking enforcement of the \$2,970.00 liquidated damages fee which she said was necessary because of the work that was required to re-rent the suite following the tenants' abrupt departure.

The tenant disputed that any money was owed in relation to the tenancy. The tenant said that she gave notice to the landlord by email on September 1, 2017. The tenant explained that an altercation had arisen between the parties on November 1, 2017 and the police were called. The tenant said that during this altercation, the landlord took her cellphone, accessed her email, and altered the move-out date listed on the email she sent. She said that she no longer had the original message informing the landlord of the September 1, 2017 move-out and only had the altered message from November 1, 2017.

As part of their evidentiary package, the landlords supplied a copy of an email sent at 12:01 A.M. on November 1, 2018 from tenant C.M. to landlord L.T informing the landlords that November 1, 2018 would be their final day in occupation of the rental unit. Tenant C.A. continued by writing in the email that she would be copying and pasting an earlier message. This message which was included in the landlord's evidentiary package purports to show an email from tenant C.A. dated October 1, 2017, informing the landlord that she would be moving out November 1, 2017.

### Analysis

Section 7 of the *Act* explains, “If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.”

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, “Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.” In this case, the landlord argued that written notice was provided on November 1, 2017 at 12:01 AM, while the tenant alleged that written notice was given on September 1, 2017. The landlord testified that upon receipt of this notice she posted two separate online advertisements on November 1, 2017 listing the apartment for rent for immediate occupation, and later lowered the price of the rental unit in an effort to attract new tenants.

The tenant alleged that during the course of an altercation during move-out, the landlords had manipulated an email she had sent to them on September 1, 2018 and changed the date of her notice to November 1, 2018. This message which was allegedly copied and pasted to the November 1, 2017 submitted in evidence email does not contain official timestamp or any information regarding who sent it, who it was sent to, when it was sent, or the subject of the email as is typical of email messages. In addition, it notes a date of October 1, 2017 which differs from the September 1, 2017 offered by the tenant in her testimony. I find these inconsistencies difficult to reconcile and I accept the landlord's testimony and evidence that notice was provided to her on November 1, 2017 at 12:01 A.M. as was shown in the email she submitted with her evidence. In addition, I find that the landlord has made *reasonable* efforts to re-rent the unit as soon as possible. I accept her testimony that she posted the unit on two separate websites on the same day that notice was given and I find her lowering the price of the rental unit to speak to her true intentions related to finding new tenants. The landlord is granted relief for the one month she could not find a tenant in the form of the monetary award against the tenants for unpaid rent for November 2017.

The landlord has also applied for a monetary award of \$2,970.00 related to the liquidated damages clause which she argued was broken when the tenants vacated the rental unit without proper notice.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, 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. In this case, the onus is on the landlords to prove entitlement to a claim for a monetary award.

As part of their evidentiary package the landlords produced a copy of the tenancy agreement which shows that the tenants agreed to a liquidated damages clause requires payment of \$2,970.00, “if the tenant ends the fixed term tenancy or is in breach of the Residential Tenancy Act or a material term of this Agreement that causes the landlord to end the tenancy before the end of the term.”

*Residential Tenancy Policy Guideline #4* examines the issue of liquidated damages and notes, “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...If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent.” This *Guideline* notes that a liquidated damages clause will be found to be valid if; the sum demanded is not extravagant in comparison to the greatest loss that could follow a breach, if an agreement is to pay money and a failure to pay requires that a greater amount be paid, or if a single lump sum is to be paid on occurrence of several events, some trivial some serious.

After examining the landlords’ application and the events which led to a violation of section 7 of the *Act*, I find that the landlords are entitled to a monetary award of \$2,970.00. This amount is *not extravagant in comparison to the greatest loss that could follow a breach*, it is not an amount over and above the monthly rent, and it is not contingent on a series of several events. The tenant violated the *Act* and therefore must pay the damages which have stemmed from such a breach.

I award the landlords the entirety of their application for a monetary award. As they were successful in their application they may pursuant to section 72 of the *Act*, recover the \$100.00 filing fee from the tenants.

Conclusion

I issue a Monetary Order of \$6,140.00 in favour of the landlords as follows:

Item	Amount
Unpaid Rent for November 2017	\$3,070.00
Breach of Liquidated Damages Clause	2,970.00
Return of Filing Fee	100.00
<b>Total =</b>	<b>\$6,140.00</b>

The landlords are provided with a Monetary Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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 25, 2018

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Residential Tenancy Branch