



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNDL-S, MNRL-S, MNDCL-S, FFL

### Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 2:10 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord, another Residential Tenancy Branch (RTB) staff member who attended for training purposes only and I were the only ones who had called into this teleconference.

The landlord provided undisputed sworn testimony and written evidence that he mailed copies of his dispute resolution hearing package and written evidence to both tenants by registered mail on May 25, 2018. The landlord testified that the tenants did not leave him forwarding addresses when they abandoned their tenancy. He said that he sent the registered mail to addresses they had provided to him when they applied for their tenancy in May 2017. The landlord entered into written evidence copies of Canada Post Customer Receipts and Tracking Numbers to confirm these registered mailings. The landlord also entered into written evidence copies of the Canada Post Online Tracking System Records, which revealed that the material sent to Tenant JCB was successfully delivered to that tenant on May 28, 2018. The landlord provided similar written evidence to confirm that the material sent to Tenant GH was returned to the landlord on June 26, 2018, as unclaimed by that tenant.

Based on the landlord's undisputed written evidence that Tenant JCB (the tenant) signed for receipt of the landlord's hearing and evidence package on May 28, 2018, I find that the tenant was deemed served with this material in accordance with sections 88, 89 and 90 of the *Act* on May 30, 2018, the fifth day after its registered mailing.

By contrast, the landlord was unable to demonstrate that the dispute resolution hearing package and written evidence sent to Tenant GH (the other tenant) by registered mail was received by the other tenant. The landlord confirmed that the address where they sent this material to the other tenant was not one that the other tenant had provided to the landlord after May 2017. As this address was over a year old, there is no way of telling whether the other tenant continues to receive mail at that address. Under these circumstances, I find that the landlord has not demonstrated to the extent required that the other tenant has been served with the dispute resolution hearing package and written evidence in accordance with sections 88 or 89 of the *Act*. For this reason, I dismiss the landlord's application for a monetary award against Tenant GH.

#### Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the security deposit for this tenancy in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

#### Background and Evidence

On June 1, 2017, the two tenants and the landlord signed a one year fixed term residential tenancy agreement (the Agreement). According to the terms of the Agreement, the tenancy was to run from June 1, 2017 until May 31, 2018. The parties also signed an Addendum to that Agreement, in which the tenants agreed to among other items a provision that "Breaking of Lease Before End of Tenancy by Tenant" was to have a "Penalty = \$2600".

Monthly rent was set at \$2,600.00 for this furnished rental suite with an additional \$75.00 charged monthly for parking. The landlord continues to hold a \$2,600.00 security deposit for this tenancy paid on June 15, 2017. At the hearing, I informed the landlord that the maximum security deposit that a landlord can charge for a tenancy is one-half of the monthly rent, in this case, \$1,300.00. Had the tenancy not already ended, the landlord would be required to return \$1,300.00 to the tenants for the landlord's overcharging of the security deposit.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on November 6, 2017, a copy of which he entered into written evidence. This 10 Day Notice identified \$2,675.00 as owing as of November 1, 2017. The landlord testified that the tenants

did not pay anything further towards this tenancy. The landlord understood that the other tenant likely vacated the rental unit by October 31, 2017, and the remaining tenant had abandoned the rental unit by November 12, 2017, by which time the landlord had obtained possession of the premises.

The landlord testified that he placed a rental advertisement on a popular rental website on November 12, 2017, seeking a monthly rent of \$2,400.00. When he was not receiving sufficient interest in this rental unit, the landlord retained the services of a rental property manager by the end of November 2017. The rental property manager lowered the asking rent from \$2,400.00 to \$2,200.00, and advised the landlord that it would be easier to re-rent this as an unfurnished suite.

The landlord testified that the rental property manager was successful in locating new tenants for this rental suite on February 6, 2018. The new tenants took occupancy as of March 15, 2018, for a monthly rent of \$2,000.00 for the unfurnished suite, which included parking. The landlord's claim for a monetary award for loss of rent included the full loss of rent from November 1, 2017 until March 15, 2018, plus the reduced rent of \$675.00 from March 15, 2018 until the scheduled end to this tenancy on May 31, 2018.

The landlord entered into written evidence a Monetary Order Worksheet, which outlined the following breakdown of the \$18,891.92 monetary award the landlord was seeking, which excluded the recovery of the landlord's \$100.00 filing fee.

<b>Item</b>	<b>Amount</b>
Rental Income Loss (November 1, 2017 to March 15, 2018)	\$13,725.00
Cleaning Fees	1,370.35
Keys	44.79
Replacement of 2 Fobs	200.00
Strata Bylaw Fine for Noise	200.00
Visitor Parking Tag	25.00
Addendum- Liquidation Damages	2,600.00
Damage to Sofa	726.88
<b>Total of Above Items</b>	<b>\$18,892.02</b>

The landlord also provided copies of invoices, receipts, photographs, and reports of the joint move-in condition inspection of the rental unit on June 1, 2017, as well as various bank statements to document his claim.

### Analysis

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. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age. Section 7(1) of the *Act* also 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.

I find that the tenants were in breach of their fixed term tenancy agreement because they vacated the rental premises prior to the May 31, 2018 date specified in that agreement. As such, the landlord is entitled to compensation for losses he incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*.

There is undisputed evidence that the tenants did not pay any rent from November 1, 2017 until the end of their fixed term tenancy. 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, given the time of year, to re-rent the premises. The landlord gave undisputed sworn testimony that he placed advertisements in a popular rental website as soon as he obtained possession of the rental unit for an amount that was less than the tenants were paying. When this process did not lead to a rental of the premises, he secured the services of a professional rental property manager by December 1, 2017, who listed the premises for a further reduced rent of \$2,200.00 for an unfurnished rental suite. This process eventually led to the signing of a lease with new tenants on February 6, 2018, less than two months after the tenants vacated the premises, for \$2,000.00, an amount that was still less than the asking rent. As such, I am satisfied that the landlord has discharged his duty under section 7(2) of the *Act* to minimize the tenants' losses.

Based on the landlord's undisputed written evidence and sworn testimony, I find that the landlord is entitled to a monetary award of \$2,675.00 for each of the 4 1/2 months from November 1, 2017 until March 15, 2018, totalling \$12,037.50. From March 16, 2018 until the scheduled end of this fixed term tenancy on May 31, 2018, the landlord lost \$675.00 in reduced rent the landlord received from the new tenants who commenced their tenancy in mid-March 2018. This results in a monetary award of \$1,687.50 to the landlord for this period.

Paragraph 37(2)(a) of the *Act* establishes that when a tenant vacates a rental unit the tenant must “leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.” Based on the landlord's undisputed sworn testimony, written and photographic evidence, I find that the tenants did not leave the premises reasonably clean or undamaged except for reasonable wear and tear.

In reviewing the landlord's claim for \$1,370.35 in cleaning costs, I note the following breakdown of these costs from the landlord's invoice:

Item	Amount
Moving Furniture	\$590.00
Cleaning	610.00
Carpet Cleaning	250.00
Less 10 % Discount	-145.00
Plus GST	65.25
<b>Total of Above Items</b>	<b>\$1,370.35</b>

While I allow the landlord's costs for cleaning and carpet cleaning, I do not find that the tenant should be held responsible for costs the landlord incurred in moving furniture so as to convert this rental unit from a furnished unit to an unfurnished one. As such, I allow only that portion of the landlord's claim for cleaning and carpet clearing

Item	Amount
Cleaning	\$610.00
Carpet Cleaning	250.00
Less 10 % Discount	-86.00
Plus GST	38.70
<b>Monetary Award for Cleaning &amp; Carpet Cleaning</b>	<b>\$812.70</b>

Section 25(1) of the *Act* establishes that landlords are responsible for the costs of rekeying locks at the start of a new tenancy. For that reason, I dismiss the landlord's application for the recovery of the cost of replacing keys that the tenants did not return at the end of their tenancy.

As there is undisputed evidence that the tenants did not return two fobs to enter this strata building nor did they return the Visitor Parking Tag, I allow both of these losses claimed by the landlord.

I also allow the landlord's undisputed evidence that the landlord was required to pay a strata bylaw fine of \$200.00 arising from this tenancy.

The RTB's Policy Guideline 4 provides the following guidance as to claims by landlords for liquidated damages.

*This guideline deals with situations where a party seeks to enforce a clause in a tenancy agreement providing for the payment of 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 tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. In considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into...*

In this case, the Addendum signed by the parties at the beginning of this tenancy made no reference to liquidated damages whatsoever, and in fact, referred to the charge as "a penalty." As this was wording drafted by the landlord, I can make no other conclusion than finding that this term in the Addendum was intended to act as a penalty against the tenants in event that they broke their lease, the term used in this portion of the Addendum. In coming to this conclusion, I also note that the landlord has made a very significant claim for losses arising out of his inability to re-rent this rental unit to another tenant and has provided very little evidence that would demonstrate any costs associated with the releasing of these premises or any calculations that would reveal that this cost was a genuine pre-estimate of the re-leasing costs should the tenancy end early. For these reasons, I dismiss the landlord's claim for liquidated damages, as by his own wording, there was no liquidated damages clause in the Addendum, but a "Penalty" clause which is specifically disallowed for the reasons outlined in Policy Guideline 4.

I have also considered the landlord's claim for a monetary award of \$726.88 for the damage to a sofa that was part of the furnishings of this rental unit. At the hearing, the landlord testified that this sofa was about two or three years old at the time it was damaged beyond repair. The landlord later corrected his claim, saying that the invoice he provided was for a couch, but was replaced with a smaller loveseat, which actually cost \$649.00. When questioned as to the date of the invoice, the landlord said that the sofa was actually purchased on December 24, 2012. By the end of this tenancy, this loveseat would then have been almost five years old, as opposed to the two or three years initially claimed by the landlord.

While I accept that there has been damage to the landlord's sofa, damage that was so severe that it had to be discarded, there is little to establish the useful life of a loveseat in a rental property. By the end of this tenancy, there would have been significant depreciation in the value of this loveseat from the landlord's cost incurred in December 2012. Since I accept that there would still be some value to a five year old sofa in a rental tenancy, I allow the landlord a

monetary award of \$200.00 for the damage incurred to this piece of furniture during this tenancy, roughly one third of its initial cost.

I allow the landlord to retain the \$2,600.00 he has retained from the security deposit he overcharged for this tenancy. No interest is payable over this period.

As the landlord has been successful in this application, I allow the landlord to recover the \$100.00 filing fee from the tenant.

### Conclusion

I issue a monetary Order in the landlord's favour against Tenant JCB, the only tenant deemed served with the landlord's application for dispute resolution. This monetary Order allows the landlord to recover unpaid rent, losses and damage arising out of this tenancy, to recover the filing for the landlord's application, and to retain the security deposit for this tenancy, under the following terms:

Item	Amount
Rental Income Loss November 1, 2017 to March 15, 2018 (4.5 months @ \$2,675.00 = \$12,037.50)	\$12,037.50
Rental Income Loss March 16, 2018 to May 31, 2018 (2.5 months @ \$675.00 = \$1,687.50)	1,687.50
Cleaning and Carpet Cleaning	812.70
Replacement of 2 Fobs	200.00
Strata Bylaw Fine for Noise	200.00
Visitor Parking Tag	25.00
Damage to Sofa	200.00
Less Security Deposit	-2,600.00
Filing Fee	100.00
<b>Total Monetary Order</b>	<b>\$12,662.70</b>

The landlord is provided with these Orders in the above terms and Tenant JCB must be served with this Order as soon as possible. Should Tenant JCB fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlord's application against Tenant GH is dismissed without leave to reapply, as the landlord has already obtained a monetary award for the items claimed in his application.

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: July 11, 2018

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Residential Tenancy Branch