



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

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

### Introduction

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

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

Only the landlord attended the hearing. The landlord was given a full opportunity to be heard, to present testimony and to make submissions.

The landlord said she sent a copy of her application for dispute resolution, along with her evidentiary package to the tenant by way of Canada Post Registered Mail on December 7, 2017. A copy of the Canada Post Registered Mail tracking number was provided to the hearing as part of the landlord's testimony. Pursuant to section 88, 89 & 90 of the *Act* the tenant is deemed served with these documents on December 12, 2018, five days after their posting.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award?

Can the landlord recover the filing fee?

### Background and Evidence

The landlord provided undisputed testimony that this tenancy began on August 1, 2017 and ended on November 30, 2017. This tenancy was for a fixed-term of one year, with the tenancy set to expire on July 31, 2018. Rent was \$2,695.00 and a security deposit of \$1,347.50 paid at the outset of the tenancy, continues to be held by the landlord.

The landlord explained that the tenant vacated the rental unit prior to the end of the parties' fixed-term tenancy agreement. The landlord said that despite her best efforts she was unable to re-rent the suite until February 14, 2018. The landlord said that she was seeking a monetary award in reflection of unpaid rent for December 2017 and January 2018, along with the accompanying utility bills which the tenant had agreed to pay as per the terms of their signed tenancy agreement. The landlord sought a total of \$5,962.19 as follows:

- December 2017 rent - \$2,695.00
- January 2018 rent - \$2,695.00
- Liquidated Damages - \$400.00
- Hydro and Water - \$172.19

= \$5,962.19

The landlord provided a copy of the tenancy agreement signed by the parties. This tenancy agreement contained a clause which stated the tenant agreed to a \$400.00 liquidated damages clause if the tenant breached a material term of the tenancy agreement or if the tenant provided the landlord with notice of an intention to breach the tenancy agreement and end the tenancy by vacating before the end of any fixed term.

The landlord said that after having received notice of the tenant's intention to vacate the suite before the end of the fixed term tenancy, she immediately placed the rental unit on Craigslist. The landlord said that she started showing the suite soon after the ad was posted and had several viewings in November and December 2017. The landlord provided a written description of each view as part of her evidentiary package. The landlord continued by describing other viewings that took place in December 2017 and January 2018 which she did not record in writing. The landlord also explained that she dropped the rent by \$200.00 per month in an effort to attract new occupants. The landlord said that she eventually rented the unit in February 2018 for this lower rate.

### 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, “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.”

As noted above, section 7 states that when a person breaches their tenancy agreement, they must compensate the other party for this breach. I accept the landlord's undisputed testimony that she made *reasonable* efforts to re-rent the unit as quickly as possible by posting it immediately on a local website, lowering the rent by \$200.00 per month, and by hosting several viewings for a period of over eight weeks. No evidence was presented at the hearing or submitted by the tenant to rebut the landlord's testimony and evidence. I will therefore award the landlord a monetary award of \$5,562.19 for the unpaid rent of December 2017 and January 2018, along with the unpaid utility bills due under the terms of the tenancy agreement for the time periods cited above.

The second portion of the landlord's application concerns an award of \$400.00 for liquidated damages.

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 landlord to prove entitlement to a claim for a monetary award.

As part of their evidentiary package the landlord produced a copy of the tenancy agreement which shows that the tenant agreed to a liquidated damages clause requires

payment of \$400.00, “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 landlord’s application and the events which led to a violation of section 7 of the *Act*, I find that the landlord is entitled to a monetary award of \$400.00. 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.

As the landlord was successful in her application, she may recover the filing fee pursuant to section 72 of the *Act*.

Using the offsetting provisions contained in section 72 of the *Act*, I allow the landlord to retain the tenant’s security deposit in its entirety, in partial satisfaction for a return of the monetary award.

### Conclusion

I issue a Monetary Order of \$4,714.69 in favour of the landlord as follows:

Item	Amount
Unpaid Rent for December 2017	\$2,695.00
Unpaid Rent for January 2018	2,695.00
Breach of Liquidated Damages Clause	400.00
Return of Filing Fee	100.00
Return of Utility Bills	172.19

Less Security Deposit	(-1,347.50)
<b>Total =</b>	<b>\$4,714.69</b>

The landlord is provided with a Monetary Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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: July 12, 2018

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Residential Tenancy Branch