



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding IMH POOL XIV LP AND METCAP LIVING  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

MNRL-S, FFL

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution. It is readily apparent from information provided on the Application for Dispute Resolution that the Landlord is also seeking compensation for liquidated damages and that matter will, therefore, be considered at these proceedings.

The Agent for the Landlord stated that on December 11, 2017 the Application for Dispute Resolution, the Notice of Hearing, and 8 pages of evidence the Landlord submitted to the Residential Tenancy Branch were served to the Tenant. The Tenant acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

On May 08, 2018 the Tenant submitted 7 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via regular mail, on May 07, 2018. The Agent for the Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent/lost revenue, for liquidated damages, and to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on September 01, 2017;
- the tenancy was for a fixed term that ended on August 31, 2018;
- the Tenant agreed to pay monthly rent of \$1,550.00 by the first day of each month;
- the Tenant paid a security deposit of \$775.00;
- on November 20, 2017 the Tenant gave written notice to end the tenancy;;
- the rental unit was vacated on November 30, 2017; and
- the Tenant provided a forwarding address, in writing, on November 30, 2017.

The Landlord is seeking compensation for loss of revenue for December of 2017 and January of 2018. The Agent for the Landlord stated that on November 21, 2017 the rental unit was advertised on three popular websites, for rent of \$1,625.00 per month. She stated that the rental unit was re-rented for February 04, 2018.

The Landlord is seeking to recover liquidated damages. The Landlord and the Tenant agree that there is a clause in their tenancy agreement that requires the Tenant to pay \$775.00 if she gives notice to end the tenancy and vacates the rental unit prior to the end of the fixed term of the tenancy.

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.

On the basis of the undisputed evidence I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,550.00 by the first day of each month, and that this was a fixed term tenancy which was to end on November 31, 2018.

I find that the Tenant breached section 45(2) of *the Residential Tenancy Act (Act)* when she ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement. On the basis of the undisputed evidence I find that the Landlord lost revenue for the period between December 01, 2017 and February 04, 2018 as a result of this breach.

Section 7(2) of the *Act* stipulates, in part, that a landlord that claims compensation for damage or loss that results from a tenant's non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss. I find that the Landlord did not take reasonable steps to minimize the damage or loss.

I find that to properly mitigate the lost revenue the Landlord should have advertised the rental unit for \$1,550.00 per month, which is the amount the Tenant was paying. In these circumstances the Landlord advertised the rental unit for \$1,625.00 per month. I find it entirely possible that the Landlord would have been able to re-rent the unit for December 01, 2017 if the unit had been advertised for \$1,550.00. Given that this tenancy only lasted for 3 months, I find it reasonable that the rent should have remained the same.

As the Landlord did not properly mitigate the lost revenue it experienced, I dismiss the Landlord's claim for lost revenue from December of 2017 and January of 2018.

I find that there is a liquidated damages clause in the tenancy agreement that requires the Tenant to pay \$775.00 to the Landlord if she prematurely end this fixed term tenancy. 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 of liquidated damages agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into. I find that \$775.00 is a reasonable estimate given the expense of advertising a rental unit; the time a landlord must spend showing the rental unit and screening potential tenants; and the wear and tear that moving causes to residential property. When the amount of liquidated damages agreed upon is reasonable, a tenant must pay the stipulated sum even where the actual damages are

negligible or non-existent. Generally liquidated damage clauses will only be struck down when they are oppressive to the party having to pay the stipulated sum, which I do not find to be the case in these circumstances. On this basis, I find that the Landlord is entitled to collect liquidated damages of \$775.00.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

### Conclusion

The Landlord has established a monetary claim, in the amount of \$875.00, which includes liquidated damages of \$775.00 and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$775.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance \$100.00. In the event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims 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 *Act*.

Dated: July 25, 2018

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Residential Tenancy Branch