



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND   MNDC

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on January 3, 2018 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit, site, or property; and
- a monetary order for money owed or compensation for damage or loss.

The Landlord was represented at the hearing by K.O., an agent. The Tenant attended the hearing on her own behalf. Both K.O. and the Tenant provided affirmed testimony.

On behalf of the Landlord, K.O. testified the Application package and a subsequent documentary evidence package were served on the Tenant by registered mail on January 5 and 25, 2018, respectively. The Tenant acknowledged receipt. In addition, the Tenant testified that a documentary evidence package was served on the Landlord via email on January 30, 2018. Although not an approved method of service under the *Act*, K.O. acknowledged receipt on behalf of the Landlord. No further issues were raised with respect to service or receipt of the above documents. Pursuant to section 71 of the *Act*, I find these documents were sufficiently served for the purposes of the *Act*.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

After the Application was made the Landlord submitted a second monetary order worksheet, purporting to amend the claim. During the hearing, K.O. was informed that an amendment to an application for dispute resolution had to be filed to make changes to the amount of the claim. K.O. acknowledged that only the amounts sought in the original claim would be considered.

### Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage to the rental unit?
2. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?

### Background and Evidence

The Landlord submitted a copy of the tenancy agreement between the parties into evidence. It confirmed that a fixed-term tenancy began on July 15, 2017, and was expected to end on July 31, 2018. However, the tenancy ended when the Tenant vacated the rental unit on or about November 29, 2017, although the Tenant paid rent to December 31, 2017. During the tenancy, rent of \$1,050.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$525.00, which the Landlord holds.

The Landlord's claim was set out on a Monetary Order Worksheet, dated January 3, 2018. First, the Landlord claimed \$525.00 as liquidated damages. The liquidated damages clause found at paragraph 1 of the addendum to the tenancy agreement states, in part:

*The Tenant(s) agrees to an initial 12 months and 2 weeks fixed term tenancy...if the Tenant(s) provides the Landlord with notice, whether written, oral, or by conduct, of an intention to breach this agreement and end the tenancy by vacating, and does vacate before the end of any fixed term, the Tenant(s) will pay to the Landlord the sum of \$525.00 as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit.*

[Reproduced as written.]

On behalf of the Landlord, K.O. confirmed the Tenant paid rent to December 31, 2017, and testified the Landlord was able to re-rent the unit, effective January 1, 2018.

In reply, the Tenant testified she had to move out before the end of the fixed term due to the presence of bedbugs in the rental unit. According to the Tenant, she is afraid of and allergic to these insects.

In response to the Tenant's testimony concerning bed bugs, K.O. testified the Landlord received the Tenant's complaint about bed bugs on November 28, 2017, and that a pest control company attended the rental unit on November 29, 2017. As noted above, the Tenant vacated the rental unit on November 29, 2017. According to K.O., only one bug was found. However, the rental unit was treated and the pest control company returned for follow up on December 8, 2017. The Tenant did not dispute K.O.'s testimony in this regard.

Second, the Landlord claimed \$150.00 for the cost to remove and dispose of furniture left behind by the Tenant. On behalf of the Landlord, K.O. testified that two bed frames and two mattresses were left behind by the Tenant. In support, the Landlord submitted a hand-written invoice for \$150.00 and a second invoice for \$152.25. According to K.O., the first invoice was an estimate. The second invoice represented the amount paid. K.O. testified the person who performed the work did not wish for the cost to significantly exceed the amount of the estimate so reduced the final amount due and added taxes, resulting in a balance due of \$152.25.

In reply, the Tenant testified that she did not know what to do with the furniture, believing they contained bed bugs. However, the Tenant did not dispute that she left the furniture behind.

Third, the Landlord claimed \$78.75 to clean the carpets at the end of the tenancy. In support, the Landlord relied upon paragraph 4a of the addendum to the tenancy agreement, which states, in part:

*The Tenants(s) agrees that at the end of the tenancy (regardless of the length of the tenancy) he/she will:*

*Have all carpets professionally steam cleaned just prior to move-out with proof of invoice/payment to carpet cleaning company to be furnished to the Landlord.*

[Reproduced as written.]

The Landlord also submitted a receipt for the amount claimed.

In reply, the Tenant agreed with this aspect of the Landlord's claim and noted that she previously informed the Landlord that this amount could be deducted from the security deposit held.

Finally, the Landlord claimed \$100.00 in recovery of the filing fee paid to make the Application.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers the director to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

With respect to the Landlord's claim for \$525.00 for liquidated damages, Policy Guideline #30 confirms that a fixed-term tenancy exists when "the landlord and tenant have agreed that the tenancy agreement will begin on a specified date and continue until a predetermined expiry date." Policy Guideline #30 goes on to state: "neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties." Further, Policy Guideline #4 states the following about liquidated damages clauses:

*A liquidated damages clause is a clause in a tenancy agreement where the parties agree in an 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.*

...

*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. Generally, clauses of this nature will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum.*

[Reproduced as written.]

I find the Landlord and the Tenant were parties to a fixed-term tenancy for the period from July 15, 2017, to July 31, 2018, and that the Tenant breached the fixed-term tenancy agreement by ending the tenancy on November 29, 2017. Further, I find the liquidated damages clause found in paragraph 4 of the tenancy agreement is not a penalty. The liquidated damages clause was agreed to in advance and is a reasonable amount when compared to monthly rent. Accordingly, I award the Landlord \$525.00 for liquidated damages.

With respect to the Landlord's claim for \$150.00 to remove and dispose of furniture left behind by the Tenant at the end of the tenancy, I find the Landlord is entitled to recover the amount claimed. The Tenant acknowledged leaving the bed components behind. The Landlord is granted a monetary award in the amount of \$150.00.

With respect to the Landlord's claim for \$78.75 to clean the carpets at the end of the tenancy, the Tenant agreed during the hearing that the Landlord could retain this amount from the security deposit. I find the Landlord is entitled to a monetary award in the amount of \$78.75.

Finally, having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. I also find it appropriate in the circumstances to order that the Landlord apply the security deposit held in partial satisfaction of the claim. Accordingly, pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$328.25, which has been calculated as follows:

<b>Claim</b>	<b>Amount allowed</b>
Liquidated damages:	\$525.00
Furniture removal:	\$150.00
Carpet cleaning:	\$78.25
Filing fee:	\$100.00
LESS security deposit:	(\$525.00)

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**TOTAL:**

**\$328.25**

Conclusion

The Landlord is granted a monetary order in the amount of \$328.25. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: August 7, 2018

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Residential Tenancy Branch