



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord: MNDCL-S, FFL    Tenant: MNDCT, MNSD, FFT

### Introduction

On June 13, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) for a Monetary Order for Liquidated Damages, to apply the security deposit to the claim and to be compensated for the filing fee.

On June 15, 2018, the Tenant submitted an Application for Dispute Resolution under the Act and requested a Monetary Order to recover their rent and their security deposit, and to be compensated for the cost of the filing fee. The Tenant’s Application was crossed with the Landlord’s Application and the matter was set for a participatory hearing via conference call.

The Landlord and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before 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.

### Issues to be Decided

Landlord:

Should the Landlord receive a Monetary Order for Liquidated Damages and to apply the security deposit and rent to their claim, pursuant to Section 67 and 72 of the Act?

Should the Landlord be reimbursed for the cost of the filing fee, pursuant to Section 72 of the Act?

Tenant:

Should the Tenant receive a Monetary Order to recover their rent and their security deposit, pursuant to Section 67 of the Act?

Should the Tenant be reimbursed for the cost of the filing fee, pursuant to Section 72 of the Act?

### Background and Evidence

The Tenant and the Landlord agreed to the following terms of the tenancy:

A Tenancy Agreement, as an electronic document, was presented to the Tenant from the Landlord on May 14, 2018. The Tenancy Agreement stated that the fixed term agreement for the rental unit would begin on June 1, 2018 and expire on May 31, 2019 and then continue on as a month-to-month tenancy. The monthly rent of \$1,395.00 was due on or before the first of each month. The Tenant signed the document via e-signature and e-transferred the security deposit of \$697.50, to the Landlord on May 15, 2018, where then the Landlord signed the Tenancy Agreement. The Landlord submitted a copy of the Tenancy Agreement as evidence.

Landlord Evidence:

The Landlord testified that after they received the security deposit and signed Tenancy Agreement from the Tenant, an appointment for a Move-In Condition Inspection was arranged for May 24, 2018. The Tenant's girlfriend attended the inspection, signed the Condition Inspection Report and paid \$1,400.00 (\$5.00 more than required) in cash for the first month's rent. The Landlord provided the keys to the Tenant's girlfriend.

On May 25, 2018, the Tenant provided written notice to the Landlord that he would like to end the tenancy and did not plan to move into the rental unit on June 1, 2018. On May 30, 2018, the Tenant provided written notice of his forwarding address and a request to be reimbursed for his security deposit and first month's rent.

On the Tenancy Agreement, the Landlord pointed out clause #12 that refers to the Tenant's responsibility when terminating the Agreement. It states that "the Tenant agrees to give the Landlord 5 weeks prior written notice and liquidated damages (not as

penalty) of one and one half months (1½) rent (\$2,092.50) to the Landlord for anticipated reletting expenses (1/2 month) and rental loss (1 month).”

The Landlord started looking for new tenants right away and provided evidence that they listed the rental unit on May 29, 2018, renewed the ad for a total of seven times until the last listing of June 24, 2018. The Landlord stated that new tenants were identified and that they signed a Tenancy Agreement for July 12, 2018 for the rental unit.

The Landlord is not claiming for loss of rent until July 12, 2018, rather, for Liquidated Damages in accordance with clause #12 on the Tenancy Agreement, in the amount of \$2,092.50. The Landlord would like to apply the one month’s rent and the security deposit to the claim.

#### Tenant’s Evidence:

The Tenant testified that he first viewed the rental unit on May 2, 2018 and observed that there were some bugs and droppings in the unit that needed to be cleaned before he moved in. On May 10, 2018, a Landlord’s agent contacted the Tenant and stated that he was first on the eligibility list for the rental unit and that there were four or five others that were interested. On May 14, 2018, the Tenant attended the rental unit for a second showing and noted that it still needed cleaning. An electronic Tenancy Agreement was sent to the Tenant on the same day and by May 15, 2018, the Tenant had signed the Tenancy Agreement, returned it to the Landlord and e-transferred the security deposit to the Landlord.

On May 24, 2018, the Tenant’s girlfriend represented him during the Move-In Condition Inspection, noticed that it hadn’t been thoroughly cleaned; however, signed the Condition Inspection Report, paid the June 2018 rent in cash and obtained the keys for the rental unit. On May 25, 2018, the Tenant advised the Landlord that he couldn’t rent the unit, as his work hours had been cut, and wished to terminate the tenancy.

The Tenant stated that it wasn’t fair for the Landlord to keep his security deposit and first month’s rent when he didn’t move into the rental unit and gave the Landlord notice a week before the tenancy was to begin. The Tenant argued that the Landlord did not mitigate his losses by advertising right away or by calling the people who were interested in the rental unit on May 10, 2018.

## Analysis

Section 16 of the Act states that the rights and obligations of a Landlord and Tenant under a Tenancy Agreement take effect from the date the Tenancy Agreement is entered into, whether or not the Tenant ever occupies the rental unit. I accept the testimony from the Landlord and the Tenant and find that the Tenancy Agreement was entered into on May 15, 2018 when both the Tenant and the Landlord signed the Tenancy Agreement and the Tenant paid the security deposit to the Landlord. Therefore, I also find that both the Tenant and the Landlord were obliged to abide by the terms of the Tenancy Agreement as of May 15, 2018.

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 the responsible 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 Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, both the Landlord and the Tenant have made claims to be compensated for losses. The Tenant paid the Landlord the first month's rent and the security deposit in accordance with clauses #2 and #7 of the Tenancy Agreement. Although the Tenant felt that it wasn't fair that the Landlord should keep the Tenant's rent and security deposit as a result of the Tenant not moving into the rental unit, I find that the Tenant failed to provide sufficient evidence that the Landlord violated any part of the Tenancy Agreement.

The Landlord has claimed a loss based on the Tenant's early cancelation of the fixed term tenancy in contravention of both the Tenancy Agreement - clause #1 and Section 44 of the Act. I accept the Landlord's undisputed testimony that the Tenant entered into a Tenancy Agreement with the Landlord, that the Tenant signed the Tenancy Agreement and agreed to the terms, including clause #12 that stated if the Tenant wished to end the tenancy before the end of the fixed term, that the Tenant would compensate the Landlord for Liquidated Damages in the amount of \$2,092.50. In consideration of the evidence presented, I find that the Landlord has established that the Tenant breached the fixed term Tenancy Agreement and that the Landlord would experience a monetary loss if he were to be ordered to reimburse the Tenant the June

2018 rent and the security deposit. As a result, I find that the Landlord has met the conditions of Section 67 to establish a monetary claim. A Liquidated Damages clause is included in a Tenancy Agreement to minimize the losses a Landlord can incur when a Tenant violates the fixed term clause of a Tenancy Agreement. As such, I find that the Tenant is responsible to reimburse the Landlord for the Liquidated Damages as established in clause #12 of the Tenancy Agreement.

Before awarding a monetary claim to the Landlord, I have to consider Section 7(2) of the Act that states a Landlord or Tenant 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. I accept the undisputed evidence of the Landlord that the Tenant provided notice to cancel his tenancy on Friday, May 25, 2018. On Tuesday, May 29, 2018 the Landlord posted their first ad, at the same monthly rent, to find new tenants and continued to do so until they found a new tenant as a result of many showings and their last renewed ad on June 24, 2018. I find that the Landlord met the requirements of Section 7(2) of the Act and was reasonable in their efforts to minimize the loss of monthly rent.

As a result of my findings that the Tenancy Agreement was valid on May 15, 2018, that the Tenant breached the fixed term tenancy clause and that the Landlord made reasonable efforts to mitigate his losses, I dismiss the Tenant's claim for a Monetary Order to recover his June 2018 rent and the security deposit without leave to reapply.

I uphold the Landlord's Application for Dispute Resolution and award a Monetary Order to the Landlord for Liquidated Damages in the amount of \$2,092.50.

The Landlord's Application has merit and I find that the Landlord should be compensated for the \$100.00 filing fee.

I issue a Monetary Order in the Landlord's favour under the following terms, which allows the Landlord to recover Liquidated Damages and the filing fee for this Application, and to retain the Tenant's June 2018 rent and security deposit:

Item	Amount
Liquidated Damages	\$2,092.50
Recovery of Filing Fee for this Application	100.00
Less the June 2018 rent paid by the Tenant	-1,400.00

Less Security Deposit	-697.50
Total Monetary Order for Landlord	<b>\$95.00</b>

### Conclusion

The Landlord has established a monetary claim, in the amount of \$2,192.50, which includes \$2,092.50 in Liquidated Damages 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 keep the Tenant's security deposit of \$697.50 and the June rent for \$1,400.00, in partial satisfaction of the monetary claim.

Based on these determinations, I grant the Landlord a Monetary Order for the balance of \$95.00. In the event that the Tenant does not 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 *Residential Tenancy Act*.

Dated: September 11, 2018

---

Residential Tenancy Branch