



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

On October 16, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for loss of rent, for liquidated damages, for damages to the rental unit, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord’s representatives (the “Landlord”) attended the conference call hearing; however, the Tenant did not attend at any time during the 58-minute hearing. The Landlord testified that they served the Tenant with the Notice of Dispute Resolution Proceeding by sending it via registered mail on October 19, 2018. The Landlord provided a tracking number and stated that, according to the Canada Post website, the Tenant signed for the package on October 30, 2018. I find that the Tenant has been duly served with the Notice of Dispute Resolution Proceeding in accordance with Section 89 the Act.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Tenant did not call into the conference, the hearing was conducted in their absence and the Application was considered along with the affirmed testimony and evidence as presented by the Landlord.

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

Should the Landlord receive a Monetary Order for damages, in accordance with Section 67 of the Act?

Should the Landlord receive a Monetary Order for liquidated damages, in accordance with Section 67 of the Act?

Should the Landlord receive a Monetary Order for loss of rent, in accordance with Section 67 of the Act?

Should the Landlord be authorized to apply the security deposit to the claim, in accordance with Section 72 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

### Background and Evidence

The Landlord provided the following undisputed evidence:

The one-year, fixed term tenancy began on March 1, 2018. The monthly rent was \$3,500.00 and the Landlord collected a security deposit of \$1,700.00. The tenancy ended on October 1, 2018 as the Tenant was running an Airbnb out of the rental unit and the Landlord served the Tenant a One-Month Notice to End Tenancy for breach of a material term.

The Tenancy Agreement included an addendum with a liquidated damages clause and specified that the Tenant will be responsible for the cost of finding a new tenant in the amount of 50%, plus GST, of one month's rent, if the Tenant ends the fixed term tenancy before the end of the original term.

The addendum also clearly stated that the tenant is not permitted to use the rental property as an Airbnb. The addendum was initialed by both the Landlord and the Tenant.

The Landlord testified that the Strata Council issued several by-law fines to the Tenant for using the rental unit as an Airbnb. The Landlord provided documentary evidence that indicated the Tenant had paid for some of the fines; however, there was still a \$200.00 unpaid balance. The Landlord is currently responsible for this outstanding bill as a result of the Tenant's breach of the Tenancy Agreement and the Landlord is claiming this amount as a loss.

The Landlord is claiming half a month's rent, plus GST, for liquidated damages. Term #1 of the Tenancy Agreement addendum indicated the term as a condition of the tenancy. The Tenant moved out of the rental unit on October 1, 2018, five months earlier than the end of the fixed term. The Landlord is claiming liquidated damages, in the amount of \$1,706.25.

The Landlord stated that it took them three months to find a new tenant for the rental unit. The Landlord stated that they started posting the rental unit on various sites right away and after two or three months, they lowered the rent from \$3,500.00 to \$3,250.00. They eventually found a

new tenant for January 1, 2019. The Landlord is claiming a loss of three months rent from October, November and December 2018, in the amount of \$10,500.00. And a loss of rent for January and February 2019, in the amount of \$500.00, as the rental unit was rented out at \$250.00 less for two months.

The Landlord stated that they had emailed and texted the Tenant to set up a move-out inspection on October 1, 2018; however, did not get a reply from the Tenant. The Landlord suggested that the Tenant never lived in the rental unit and that it was only used as an Airbnb. The Landlord attended the rental unit on October 1, 2018; however, the Tenant was not present. On October 10, 2018, the Landlord walked through the rental unit with the concierge of the building as a witness and they noted that the floors had not been cleaned, the carpets had not been vacuumed and that there was debris left behind. The Landlord submitted photos and an invoice for cleaning, in the amount of \$150.00 and is claiming this as a loss.

The Landlord stated that the Tenant closed her hydro account as of September 30, 2018. The Landlord had to establish their own account and estimated that the Tenant owed \$150.00 for the months that the Landlord's had to pay to heat the unit while it was being shown to prospective new tenants. The Landlord did not submit any hydro bills and then stated during the hearing that they had located a bill in the amount of \$50.06.

### Analysis

Section 7(1) of the Act 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.

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.

I accept the Landlord's evidence that the Tenant was running an Airbnb out of the rental unit and breaching both the Strata bylaws and the terms of the Tenancy Agreement. I find the Landlord has established a monetary claim in the amount of \$200.00, as a result of the fines the Tenant incurred from the Strata, of which, the Landlord is now responsible.

As the Tenant caused the early end of the tenancy, I find that the Landlord's claim for liquidated damages is justified. I find the Landlord has established a monetary claim in the amount of \$1,706.25, for liquidated damages.

I accept the Landlord did not collect rent for October, November and December 2018, as a result of the Tenant ending the tenancy before the end of the fixed term. I find that the Landlord has established a monetary claim for lost rent.

Before awarding a monetary claim for lost rent 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.

In this case, the Landlord did not submit any documentary evidence to demonstrate that they posted the unit for rent, when they posted or how many times, and did not provide specifics regarding when they lowered the rent to potentially attract other tenants. I find the Landlord failed to provide sufficient evidence that they showed due diligence to mitigate their losses. Instead of compensation for three month's rent, I award the Landlord the amount of one month's rent, in the amount of \$3,500.00.

As the Landlord did successfully find new tenants for the rental unit, at a lower rent, I find the Landlord should be reimbursed for the lost rent for two months, in the amount of \$500.00.

I accept the Landlord's testimony and evidence that the rental unit was not clean at the end of the tenancy and contrary to Section 37 of the Act. I find that the Landlord has established a monetary claim for the cleaning, in the amount of \$150.00.

I find that the Landlord failed to verify the actual monetary amount of the loss or damage in regard to the hydro bill. I dismiss this part of the Landlord's claim.

I find that the Landlord's Application has been successful, and that the Landlord should be reimbursed for the cost of the filing fee for this Application, in the amount of \$100.00 and in accordance with Section 72 of the Act.

I issue a Monetary Order in the Landlord's favour under the following terms, which allows the Landlord to recover the following costs, and to retain the Tenant's security deposit:

Item	Amount
Strata bylaw fines	\$ 200.00
Liquidated damages	1,706.25
October 2018 rent	3,500.00

Loss of rent for January and February 2018	500.00
Cleaning fee	150.00
Recovery of Filing Fee for this Application	100.00
Less security deposit	-1,700.00
<b>Total Monetary Order</b>	<b>\$4,456.25</b>

### Conclusion

Pursuant to Section 67 of the Act, I grant the Landlord a Monetary Order for \$4,456.25. 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: February 20, 2019

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Residential Tenancy Branch