



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SKYLINE LIVING  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCL-S, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on November 20, 2018 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or compensation;
- an order permitting the Landlord retain the security deposit; and
- an order granting recovery of the filing fee.

The Landlord's agent S.H. as well as the Tenant attended the hearing at the appointed date and time, and provided affirmed testimony.

S.H. testified that she served the Landlord's Application and documentary evidence package to the Tenant by registered mail on November 22, 2018. The Tenant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*. The Tenant confirmed that he did not submit any documentary evidence in preparation for this hearing

The parties were given an 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.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for damage or compensation pursuant to section 67 of the *Act*?
2. Is the Landlord entitled to retain the security deposit, pursuant to Sections 38 and 72 of the *Act*?
3. Is the Landlord entitled to an order granting the recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the fixed term tenancy began on June 12, 2018 and was meant to end on June 30, 2019. During the tenancy, rent in the amount of \$1,455.00 was due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$690.00 which the Landlord continues to hold. The tenancy ended early on November 19, 2018.

The parties agreed that the Landlord received the Tenant's notice to end tenancy on October 18, 2018. The Tenant's notice indicated that the he was no longer able to work due to medical reasons, and would not be receiving any income to pay rent. The Tenant indicated that he wished to end his tenancy on November 30, 2018.

The Tenant stated that he attempted to sublet his rental unit on October 20, 2018 however, was not successful. The parties agreed that the Tenant moved out on November 19, 2018, ending the fixed term tenancy early.

S.H testified that the Landlord advertises rental units on an ongoing basis. At the time of the Tenant ending his tenancy, there was an ad posted in hopes to fill the rental unit. S.H. testified that the Landlord had conducted a number of showings, however, the Landlord was unable to re rent the rental unit. The Landlord is subsequently seeking compensation in the amount of \$1,455.00 for the month of December 2018 rent for breaching the fixed term agreement.

S.H. testified that the Landlord is also seeking \$150.00 in relation to cleaning costs. S.H. testified that the parties completed a move out inspection report on November 19, 2018 at which point it was noted and mutually agreed that the kitchen, bathroom and

balcony required further cleaning. The Landlord submitted a copy of the condition inspection report which is signed by the Landlord and Tenant.

Lastly, 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:

According to Section 45 of the *Act*, A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that;

- (a) *is not earlier than one month after the date the landlord receives the notice,*
- (b) *is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*
- (c) *is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

Section 67 of the *Act* empowers me 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.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

I accept that the parties entered into a fixed term tenancy which was meant to end on June 30, 2019. The parties agreed that the Tenant provided his notice to end tenancy to the Landlord on October 18, 2018 indicating that the tenancy will end on November 30, 2018. I accept that the Landlord placed an ad to re rent the unit, however was unable to find a new tenant for the month of December 2018. I find that the Tenant was not entitled to end the fixed term tenancy early, therefore is responsible to pay rent for December 2018 in the amount of \$1,455.00.

In relation to the cleaning costs sought by the Landlord in the amount of \$150.00, I find that the parties agreed to the deductions at the time of the move out inspection as it is reflected in the move out condition inspection report submitted by the Landlord. As a result I find that the Landlord has established an entitlement to \$150.00.

Having been successful, I find the Landlord is entitled to recover the filing fee paid to make the Application. I also find it appropriate in the circumstances to order that the Landlords retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$2,482.54, which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
Rent December 2018	\$1,455.00
Cleaning:	\$150.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$690.00)
<b>TOTAL:</b>	<b>\$1,015.00</b>

Conclusion

The Landlord is granted a monetary order in the amount of \$1,015.00. The order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of BC (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: March 7, 2019

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Residential Tenancy Branch