



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TRANSPACIFIC REALTY ADVISORS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCL, 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 loss or other money owed; and
- an order granting the recovery of the filing fee.

The Landlord's Agent M.B. as well as the Tenant attended the hearing at the appointed date and time, and provided affirmed testimony.

M.B. testified that she served the Landlord's Application and documentary evidence package to the Tenant by registered mail on November 21, 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 testified that she did not submit any documentary evidence in preparation of the 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 an order granting 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 July 15, 2017 and was meant to end on July 31, 2018. The tenancy continued beyond the end of the fixed term on a month to month basis. During the tenancy, rent in the amount of \$3,375.00 was due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$1,687.50 to the Landlord. The Landlord submitted a copy of the tenancy agreement in support. The Tenancy ended on October 30, 2018. The Landlord returned the security deposit to the Tenant less \$500.00 which was mutually agreed upon at the time of the move out inspection.

M.B. is seeking monetary compensation in the amount of \$3,375.00 for unpaid rent for November 2018. The parties agreed that the Tenant provided the Landlord with her notice to end tenancy on October 8, 2018. The notice indicated that the Tenant intended on moving out of the rental unit at the end of October 2018. M.B. testified that the Tenant failed to provide the Landlord with one full month's notice to end tenancy.

M.B. testified that the Landlord made efforts to re-rent the Tenant's rental unit as soon as the Landlord received the notice to end tenancy from the Tenant. The Tenant confirmed that the Landlord conducted showings throughout October 2018. The Tenant indicated that she did the best she could to accommodate the showings as well as staged the rental unit for pictures to be taken for the rental ads. M.B. testified that the Landlord placed several advertisements on several sites commonly used to advertise rentals. The Landlord submitted copies the rental ads in support. M.B. testified that the Landlord was not able to find a new tenant until February 1, 2019.

In response, the Tenant agreed that she did not provide the Landlord with one month notice to end tenancy. The Tenant stated that she decided to end her tenancy for a several reasons. First, the Tenant testified that she was led to believe that she would be able to secure a storage locker, however, this never materialized, which caused her to rent a storage unit elsewhere. Secondly, the Tenant testified that she had ongoing concerns regarding her neighbour which appeared to be smoking marijuana and had unsavoury guests attending their residence which impacted the Tenant. Lastly, the Tenant stated that on one occasion, the neighbour's guest knocked on the Tenant's back door, scaring the Tenant and her children. The Tenant stated that she did not submit any complaints to the Landlord as she was fearful of retribution from the neighbour and their guests.

### Analysis

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

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.

According to Section 45 of the *Act*, a tenant may end a periodic 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, and (b) 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.

In this case, the parties agreed that the Tenant sent the Landlord her notice to end tenancy on October 8, 2018 indicating that the Tenant intended on moving out at the end of October 2018. The Tenancy ended on October 30, 2018. I find that the Tenant did not provide the Landlord proper notice in accordance with Section 45 of the *Act*.

I find that while the Tenant had some displeasures relating to her tenancy, the Tenant testified that she did not convey these complaints to the Landlord.

I accept that once the Landlord received the notice to end tenancy, the Landlord made reasonable efforts to re-rent the rental unit by placing ads and conducted showings throughout the month of October 2018 which was confirmed by both parties. M.B. testified that the Landlord was unable to find a new tenant until February 1, 2019. The Landlord is seeking compensation in the amount of \$3,375.00 for unpaid rent for November 2018.

In light of the above I find that the Landlord has established an entitlement to a monetary order in the amount of \$3,375.00 for unpaid November 2018 rent.

Having been successful, I find the Landlord is also entitled to recover the \$100.00 filing fee paid to make the Application

### Conclusion

The Landlord is granted a monetary order in the amount of \$3,475.00. This order must be served on the Tenant as soon as possible. If the Tenant fails to comply the monetary order it 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: March 25, 2019

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Residential Tenancy Branch