



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL, MNRL-S, FFL

### Introduction

The landlord seeks compensation from their former tenant under section 67 of the *Residential Tenancy Act* (the “Act”) for loss of rent and marketing costs, and, compensation for the cost of the filing fee under section 72 (1) of the Act. The landlord currently retains the tenant’s security deposit, of which the landlord applies to keep.

The landlord applied for dispute resolution on February 4, 2019 and a dispute resolution hearing was held on May 27, 2019. The landlord’s agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant did not attend.

The landlord’s agent (“agent”) testified that he personally served the tenant in-person with the Notice of Dispute Resolution Proceeding package (the “package”) on or about February 4, 2019. Given this testimony I find that the landlord served the tenant with the package in compliance with section 89 of the Act.

I have reviewed evidence submitted that met the *Rules of Procedure* and to which I was referred, but only evidence relevant to the issues of this application are considered.

### Issue to be Decided

Whether the landlord is entitled to compensation for loss of rent, for marketing costs, and for the filing fee.

### Background and Evidence

At the outset, I note that the tenancy agreement includes the names of two tenants. However, one of the tenants (against whom this claim is made) was a tenant in name only and did not reside in the rental unit. The other co-tenant (who has since departed Canada) was the tenant who resided in the rental unit. I use “tenant” interchangeably.

The agent testified and confirmed that the tenancy began on July 5, 2018 and was a fixed-term tenancy ending on June 30, 2019. Monthly rent was \$1,350.00 and the tenant paid a security deposit of \$675.00, of which the landlord currently retains. The landlord submitted a copy of the written tenancy agreement into evidence.

The tenant provided notice in early December 2018 that they could no longer afford the rental unit and gave notice to end the tenancy. The tenant moved out on December 29, 2018. While the landlord conducted a condition inspection report both at the start of and at the end of the tenancy, the tenant did not attend to the end of tenancy inspection. In addition, the tenant did not provide a forwarding address at the end of the tenancy.

Because of the tenant ending the tenancy earlier than permitted by the tenancy agreement, the landlord was forced to try and find new tenants. The agent advertised the rental unit and conducted multiple showings. However, given the time of year, the landlord was unsuccessful in finding a new tenant until mid-February 2019. He testified that a new tenant finally moved in and started a tenancy on February 15, 2019.

The landlord claims lost rent revenue in the amount of \$2,025.00, which represents a month and half of rent. In addition, the landlord seeks \$675.00 in marketing and agency costs. The agent testified that \$675.00 is the amount he charges landlords for his services. Finally, the landlord sought \$350.00 for unpaid rent from October and November 2019. A monetary order worksheet was submitted into evidence.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must

compensate the other for damage or loss that results. Further, section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria to be awarded compensation:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

In this case, the tenant breached section 45(2) of the Act, which states that a tenant cannot give notice to end a fixed term tenancy until a date not earlier than one month before the fixed term tenancy ends. The tenant gave notice to end the tenancy in early December 2018 and vacated the rental unit on December 29, 2018, six months before the tenancy was supposed to end.

But for the tenant's breach of the Act and the tenancy agreement the landlord would not have sustained losses.

The landlord has proven, through documentary and oral evidence, that the amount of the loss to be in the amount of \$3,050.00.

Finally, I find that, based on the oral evidence of the agent, that the landlord advertised and showed the rental unit throughout the period in question and as such did what was reasonable in minimizing their loss.

Taking into consideration the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for compensation.

A monetary award of \$3,150.00 and a monetary order of \$2,475.00 for the landlord is therefore calculated as follows:

CLAIM	AMOUNT
Loss of rent	\$2,025.00
Overdue rent	350.00
Marketing/agent costs	\$675.00
Filing fee	100.00
<i>LESS</i> security deposit	(\$675.00)
Total:	\$2,475.00

I order that the landlord may retain the entire amount of the tenant's \$675.00 security deposit in partial satisfaction of this award.

#### Conclusion

I grant the landlord a monetary order in the amount of \$2,475.00, which must be served on the tenant. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: May 27, 2019

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Residential Tenancy Branch