



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, FFL

### Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution, made on March 4, 2019 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The Tenant as well as the Landlords attended the hearing at the appointed date and time, and provided affirmed testimony.

The Landlords testified that they served their Application and documentary evidence package to the Tenant in person on March 4, 2019. The Tenant confirmed receipt. The Tenant testified that he served the Landlords with his documentary in person on May 16, 2019. The Landlords 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 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. Are the Landlords entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Are the Landlords entitled to retain the security deposit, pursuant to Section 38 and 72 of the *Act*?

3. Are the Landlords 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 tenancy began on October 1, 2018. Rent in the amount of \$1,200.00 was due to the Landlords on the first day of each month. The Tenant paid a security deposit in the amount of \$600.00 which the Landlords continue to hold. The Tenancy ended on March 2, 2019.

The Landlords testified that they served the Tenant in person with a One Month Notice to End Tenancy for Cause on January 31, 2019 with an effective vacancy date of February 28, 2019. The Landlords stated that on February 1, 2019 the Tenant expressed that he would not be able to find a new residence by February 28, 2019. The Landlords stated that on February 1, 2019 the parties agreed to sign a Mutual Agreement to End Tenancy dated February 1, 2019 with an effective date of March 31, 2019. The Landlords stated that both parties agreed that the One Month Notice was null and void in lieu of the Mutual Agreement to End Tenancy which provided the Tenant until March 31, 2019 to vacate the rental unit.

The Landlords stated that the Tenant contacted them on five different occasions throughout February 2019, requesting to change the move out date. The Landlords stated that the Tenant seemed unsure and frequently changed his mind as to when he would like to move out of the rental unit. The Landlords stated that the Tenant did not provide them with written notice to end the tenancy; therefore, they were under the impression that the tenancy would end on the effective date of the Mutual Agreement to End Tenancy, March 31, 2019. The Landlords stated that the Tenant moved out on March 2, 2019 after returning the keys to the Landlords. The Landlords stated that they are seeking compensation in the amount of \$1,200.00 to cover the loss of rent for March 2019 as they were unable to secure a new occupant.

The Tenant stated and agreed that he signed the Mutual Agreement to End Tenancy with an effective date of March 31, 2019. The Tenant stated that he signed the Mutual Agreement on February 10, 2019. The Tenant stated that he was under the impression that he was to let the Landlords know once he found a new residence to move to, which would effectively end his tenancy, regardless if it was prior to March 31, 2019. The Tenant stated that he moved out of the rental unit on March 1, 2019 and that the Landlords were unavailable to meet until March 2, 2019 to collect the keys to the rental unit.

### 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 Landlords 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 Landlords 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.

A tenancy in British Columbia may only end in accordance with the *Act*. Under Section 44 (1)( c ), the parties may agree in writing to end the tenancy. Here the parties signed a Mutual Agreement to End the Tenancy on March 31, 2019. The Tenant was bound by this agreement and could not legally end the tenancy by giving a different notice.

I accept that the Landlords were unable to re-rent the rental unit for the month of March 2019 as they were unaware that the Tenant was ending the tenancy early. In light of the

above, I find that the Landlords have established an entitlement to compensation for loss of rent for March 2019 in the amount of \$1,200.00.

Having been successful, I find the Landlords are 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 Landlords are entitled to a monetary order in the amount of \$700.00, which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
Unpaid March 2019 Rent	\$1,200.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	<i>-\$600.00</i>
<b>TOTAL:</b>	<b>\$700.00</b>

### Conclusion

The Tenant breached the Act by ending the tenancy early. The Landlords are granted a monetary order in the amount of \$700.00. 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: June 24, 2019

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Residential Tenancy Branch