



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNDCL-S, MNDL-S, MNRL-S, FFL

### **Introduction**

This hearing was convened in response to the Landlords' Application for Dispute Resolution, in which the Landlords applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The female Landlord stated that sometime in early March of 2019 the Dispute Resolution Package and evidence the Landlords submitted to the Residential Tenancy Branch on March 06, 2019, March 08, 2019, and March 11, 2019 were sent to the Tenant, via registered mail. The Tenant acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

On March 25, 2019 the Landlords submitted additional evidence to the Residential Tenancy Branch. The female Landlord stated that this evidence was not served to the Tenant. As the evidence was not served to the Tenant, it was not accepted as evidence for these proceedings.

On June 13, 2019 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlords, via registered mail, approximately 1.5 weeks ago. The female Landlord acknowledged receiving this evidence approximately 1 week ago and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

### Issue(s) to be Decided

Are the Landlords entitled to compensation for damage to the rental unit, to compensation for unpaid rent, and to keep all or part of the security deposit?

### Background and Evidence

The Landlords and the Tenant agree that:

- the tenancy began on January 15, 2018;
- rent of \$1,400.00 was due by the first day of each month;
- the Tenant paid a security deposit of \$700.00;
- on February 03, 2019 the Tenant was served with a One Month Notice to End Tenancy;
- the One Month Notice to End Tenancy declared that the Tenant must vacate the rental unit by March 31, 2019;
- the Tenant sent the Landlords a text message sometime in the middle of February, in which he informed them he would vacate by the end of February of 2019;
- the keys to the unit were returned on March 02, 2019;
- a condition inspection report was completed at the beginning of the tenancy;
- a condition inspection report was completed at the end of the tenancy;
- a forwarding address was provided on March 02, 2019, on the condition inspection report; and
- no rent was paid for March of 2019.

The Tenant stated that he had moved all of his belongings out of the unit by February 28, 2019. He stated that he understood he could move out prior to March 01, 2019, without paying rent for March, on the basis of information provided on page two of the Notice to End Tenancy.

The Landlords are seeking compensation for rent for March of 2019. The Landlords contend that the tenancy ended on March 31, 2019, on the basis of the One Month Notice to End Tenancy, and that rent was therefore due on March 01, 2019.

The Landlords are seeking compensation for bank fees related to the rent payment for March of 2019, which was not honored by the Tenant's financial institution. The Landlords and the Tenant agree that sometime in the middle of February of 2019 the Tenant told the Landlords that he was placing a "stop payment" on his rent cheque for

March of 2019. The female Landlord stated that the Landlords attempted to cash this cheque so they would have proof that the rent was not paid for March of 2019.

The Landlords are seeking compensation of \$42.00 for the cost of advertising the rental unit. The Tenant argued that the Landlords would have incurred similar advertising costs even if he had vacated the rental unit on March 30, 2019.

The Landlords are seeking compensation for damage to the rental unit. The Landlords submitted a copy of the condition inspection report, in which the Tenant gave the Landlords written permission to retain his \$700.00 security deposit in compensation for damage to the rental unit. The Tenant stated that when he signed this report he did not think he was agreeing to allow the Landlords to retain his entire security deposit. The female Landlord stated that when the Tenant signed this report the Landlords understood he was agreeing to repair and clean the unit, which the Landlords expected would cost less than \$700.00.

At the hearing the Landlords and the Tenant mutually agreed to settle the claim for damage to the rental unit under the following terms:

- the Landlords will keep \$367.75 of the Tenant's security deposit; and
- the Landlords will return the remaining \$332.25 of the security deposit to the Tenant, unless I find that it should be applied to the claim for unpaid rent.

The settlement agreement relating to damage to the rental unit was summarized for the parties on at least two occasions and all parties in attendance at the hearing indicated that they agreed to resolve this portion of the dispute under these terms.

The Landlords and the Tenant acknowledged that they understand they were not required to enter into this settlement agreement and that they understood the agreement was final and binding.

### Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the undisputed evidence I find that rent of \$1,400.00 was due on the first day of each month.

Section 44(1)(a) of the *Act* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 45, 46, 47, 48, 49, 49.1, and 50 of the *Act*. The undisputed evidence is that the Landlord served the Tenant with a One Month Notice to End Tenancy that ended the tenancy on March 31, 2019. The Tenant did not file an Application for Dispute Resolution to dispute this Notice to End Tenancy. I therefore find that this Notice to End Tenancy served to end this tenancy on March 31, 2019.

Section 45 of the *Act* allows a tenant to end a tenancy by providing written notice that ends the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day that rent is payable under the tenancy agreement. Although the Tenant sent the Landlords a text message sometime in February, in which he advised them he would be vacating the unit by February 28, 2019, I find that this was not proper notice as it did not provide the Landlords with one full month's notice. A text message sent after February 01, 2019, in these circumstances, would serve to end the tenancy on March 31, 2019.

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. As there is no evidence that this was a fixed term tenancy, I find that the tenancy did not end pursuant to section 44(1)(b) of the *Act*.

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. As there is no evidence that the parties agreed in writing to end the tenancy, I find that the tenancy did not end pursuant to section 44(1)(c) of the *Act*.

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. I find that this tenancy ended when the Tenant returned the keys to the rental unit on March 02, 2019, which is when I find the Tenant abandoned his rights to the unit.

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. As there is no evidence that this tenancy agreement was frustrated, I find that the tenancy did not end pursuant to section 44(1)(e) of the *Act*.

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. As there is no evidence that the director ordered an end to this tenancy, I find that the tenancy did not end pursuant to section 44(1)(f) of the *Act*.

I find that the Tenant failed to comply with section 45 of the *Act* when he failed to provide the Landlord with notice of his intent to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due. As the Tenant had not properly ended the tenancy prior to March 01, 2019, I find that he was obligated to pay all of the rent that was due on March 01, 2019, pursuant to section 26 of the *Act*. I therefore find that the Tenant is obligated to pay \$1,400.00 in rent that was due on March 01, 2019.

I have the authority to make findings of fact or law when making a decision or Order under the *Act*. My conclusion that the Tenant must pay rent for March of 2019 is based on my interpretation of the legislation and the evidence provided for these proceedings. I do, however, sympathize with the Tenant, as I find that the information provided on page two of the One Month Notice to End Tenancy is confusing.

I understand how the Tenant would have mistakenly believed that he could move out of the rental unit prior to March 01, 2019, without the need to pay rent for March, on the basis of the following information provided on page two of the Notice to End Tenancy:

If you do not file an Application within 10 days you are presumed to accept this Notice and must move out of the rental unit or vacate the site by the date set out on page one of this Notice (you can move out sooner).

I find that this information is confusing and I have brought my concerns to the Residential Tenancy Branch.

On the basis of the undisputed evidence I find that the Landlords incurred bank fees when the Tenant's rent cheque for March of 2019 was not honored by his financial institution. Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss. In these circumstances, I find that the Landlord did not take reasonable steps to minimize the cost of the dishonored cheque. As the Tenant advised the Landlords that he was placing a "stop payment" on his rent cheque, I find that the Landlords could have avoided paying the bank fees by not attempting to cash a

cheque they could reasonably expect would not be honored by the Tenant's financial institution. I therefore dismiss the claim for bank fees.

I find that the Landlords would have incurred advertising costs even if the Tenant had given proper notice to end the tenancy. As the Landlords would have incurred these costs even if proper notice had been provided, I find that they are not entitled to compensation for the cost of advertising.

On the basis of the settlement agreement reached at the hearing, I find that the Landlords are entitled to retain \$367.75 from the Tenant's security deposit in compensation for damage to the rental unit.

I find that the Landlords' Application for Dispute Resolution has merit and that the Landlords are entitled to recover the fee for filing this Application for Dispute Resolution.

### Conclusion

The Landlords have established a monetary claim, in the amount of \$1,867.75, which includes \$1,400.00 in rent for March of 2019; \$367.75 for damage to the rental unit; and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlords to retain the Tenant's entire security deposit of \$700.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlords a monetary Order for the balance \$1,167.75. In the event the Tenant does not voluntarily 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 *Act*.

Dated: June 25, 2019

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Residential Tenancy Branch