



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NACEL PROPERTIES LTD 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 under the Residential Tenancy Act (the "Act"). The landlord applied for a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation and for recovery of the filing fee paid for this application.

The landlord, the tenants and their agent, AW, attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the beginning of the hearing, neither party raised any concerns with the service of each other's evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Is the landlord entitled to monetary compensation allowed under the Act and Residential Tenancy Policy Guideline and to recover the filing fee paid for this application?

### Background and Evidence

The landlord submitted that the tenants' daughter, AW, signed a tenancy agreement on March 19, 2019, on behalf of her parents, as they do not speak or write English very well. The written tenancy agreement submitted into evidence by the landlord shows that the tenancy between the landlord and the tenants was set to begin on April 15, 2019, and end on April 30, 2020, monthly rent was set at \$1,750.00, and a security deposit of \$875.00 was collected by the landlord.

The landlord submitted that the tenants never moved into the rental unit and they received notice on April 15, 2019, from AW, that her parents were cancelling the tenancy agreement.

The landlord's monetary claim is \$875.00 for liquidated damages, pursuant to the term in the written tenancy agreement which allows for that amount if the tenants terminated the tenancy before the end of the original term, in this case, April 30, 2020.

The landlord requested to keep the tenants' security deposit in satisfaction of their monetary claim of \$875.00.

The landlord's further relevant evidence was the written cancellation signed by AW, on behalf of her parents.

#### *Tenant's response-*

AW submitted that her parents did not move into the rental unit for personal reasons and that is why she cancelled the agreement.

### Analysis

Under section 16 of the Act, the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

In this case, the evidence is clear that the landlord and the tenants had a signed, fully executed written tenancy agreement for a tenancy start date of April 15, 2019. The evidence is that the tenants notified the landlord on the day the tenancy was to begin that they were not moving in.

Under section 45(2) of the Act, a tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term, or April 30, 2020, in this case.

I therefore find that the tenants provided insufficient notice that they were ending the fixed term tenancy agreement prior to the end of the fixed term as they never moved in.

As to the landlord's claim, RTB Policy Guideline #4 (Liquidated Damages) states that in order to be enforceable, a liquidated damages clause in a tenancy agreement must be a genuine pre-estimate of loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

In the case before me, I find the landlord submitted sufficient evidence to show that the liquidated damages clause was a genuine estimate of costs to re-rent the rental unit considering the tenants never moved into the rental unit and were required to immediately find another tenant. I therefore approve their claim for \$875.00.

I also grant the landlord recovery of their filing fee of \$100.00.

Due to the above, I find the landlord is entitled to a monetary award of \$975.00, comprised of liquidated damages of \$875.00 and the filing fee paid for this application in the amount of \$100.00.

At the landlord's request, I direct them to retain the tenants' security deposit of \$875.00 in partial satisfaction of their monetary award of \$975.00. I therefore grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$100.00.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenants are advised that costs of such enforcement may be recoverable from the tenants.

### Conclusion

The landlord's application for monetary compensation is granted.

The landlord is granted monetary award of \$975.00, is granted authority to retain the tenants' security deposit of \$875.00 in partial satisfaction, and is granted a monetary order in the amount of \$100.00 for the balance due.

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: July 3, 2019

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Residential Tenancy Branch