



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOMES LTD. and  
[tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      LANDLORD: MNR, FF  
TENANT: MNDC, FF

### **Introduction**

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking compensation for lost rental income and to recover the filing fee for this proceeding.

The Tenant filed seeking a monetary order for compensation for damage or loss under the Act, the regulations or the tenancy agreement and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on April 5, 2019, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord were done by registered mail on April 8, 2019, in accordance with section 89 of the Act.

### **Issues to be Decided**

Landlord:

1. Is the Landlord entitled to compensation for unpaid rent or lost rental income and if so how much?

Tenant:

1. Are there damages or losses to the Tenant and if so how much?
2. Is the Tenant entitled to compensation for loss or damage and if so how much?

### Background and Evidence

This tenancy started on June 1, 2018 as a fixed term tenancy with an expiry date of May 31, 2019. Rent was \$1,350.00 per month payable on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$675.00 and a pet deposit of \$675.00 at different times but at the start of the tenancy. The Landlord said the Tenant gave written Notice on March 13, 2019 to end the tenancy on or before April 12, 2019. The Landlord said a move in condition inspection was completed and signed on May 29, 2018 and a move out inspection was completed on March 28, 2019. The Landlord continued to say the Tenant agreed to and signed that the Landlord could deduct \$500.00 as liquidated damages because the tenancy ended before the fixed term expiry date of May 31, 2019. Further the Landlord said the Tenant also agreed to a \$60.00 deduction from the security deposit for cleaning charges. The Landlord said they returned the balance of the security deposit and pet deposit to the Tenant. The Tenant said he agreed to the two deductions of \$500.00 and \$60.00 from his security deposit.

The Landlord continued to say their application is for lost rental income for April 2019 in the amount of \$1,350.00. The Landlord said they were unable to find a new tenant until May 1, 2019. The Landlord continued to say they started advertising the unit on March 14, 2019 after receiving the Tenant's notice to end tenancy dated March 13, 2019.

The Landlord also requested to recover the filing fee of \$100.00 if their application is successful.

The Tenant said his application is to dispute the rent owing for April 2019 in the amount of \$1,350.00. The Tenant said he is not requesting the Landlord pay him any damages it was just the way he made his application. Further the Tenant said the Landlord received \$500.00 for him breaking the fixed term tenancy agreement which should cancel the rent owed. As well the Tenant said he does not believe the Landlord tried hard enough to get a new tenant for April 12, 2019. The Tenant said the area has a very low availability of rental units and the Landlord could have easily found a new tenant for April 2019. The Tenant said for these two reasons he believes the Landlord's request for the April 2019 rent of \$1,350.00 should be dismissed.

The Tenant said if he is successful he requests to recover the filing fee from the Landlord.

Analysis

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 45 of the Act says a Tenant may end a fixed term tenancy **not earlier than the date specified in the tenancy agreement** and it must be with written notice at least one month prior to the date that rent is payable or with the agreement of the Landlord.

In this situation the tenancy ended on April 30, 2019 by agreement of the parties.

The Tenant did not give the Landlord proper notice to end the tenancy and the Tenant does not have the right under the Act to withhold part or all of the rent; therefore I find the Tenant is responsible for the rent of \$1,350.00 for April, 2019.

Further the Tenant explained that he is not applying for compensation from the Landlord but to dispute the April 2019 rent. As I have found the Tenant is responsible for the April 2019 rent of \$1,350.00, I find the Tenant has not established ground for his claims and I dismiss the Tenant's application without leave to reapply.

As the Landlord has been successful in this matter, she is also entitled to recover from the Tenant the \$100.00 filing fee for this proceeding. The Landlord will receive a monetary order for the balance owing as following:

Rent arrears:	\$ 1,350.00	
Recover filing fee	\$ 100.00	
Subtotal:		\$1,450.00
Balance Owing		\$ 1,450.00

Conclusion

A Monetary Order in the amount of \$1,450.00 has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenant's application is dismissed with out leave to reapply.

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 2, 2019

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Residential Tenancy Branch