



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1057151 BC LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFL, MNDCL-S

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on June 24, 2019 (the "Application"). The Landlord sought compensation for monetary loss or other money owed, to keep the security and/or pet damage deposit and reimbursement for the filing fee.

The Agent attended the hearing for the Landlord. Nobody attended the hearing for the Tenants. I explained the hearing process to the Agent who did not have questions when asked. The Agent provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenants did not. I addressed service of the hearing package and Landlord's evidence.

The Agent testified that the hearing packages and evidence were sent to the Tenants by registered mail. The Landlord submitted customer receipts showing packages were sent to each Tenant June 26, 2019. The Agent testified that the packages were sent to the Tenants' forwarding address as provided by email June 12, 2019. This email had been submitted as evidence. The customer receipts have Tracking Number 1 and 2 on them. I looked these up on the Canada Post website which shows the packages were delivered and signed for July 03, 2019. The delivery confirmation shows that a third party signed for these packages.

Based on the undisputed testimony of the Agent, customer receipts and Canada Post website information, I find the Tenants were served with the hearing package and evidence in accordance with sections 59(3), 88(d) and 89(1)(d) of the *Residential Tenancy Act* (the "Act"). Based on the Canada Post website information, I find the Tenants received these packages July 03, 2019, well before the hearing.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenants. The Agent was given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the Agent. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Landlord entitled to compensation for monetary loss or other money owed?
2. Is the Landlord entitled to keep the security and/or pet damage deposit?
3. Is the Landlord entitled to reimbursement for the filing fee?

### Background and Evidence

The Landlord originally sought \$1,208.00 for unpaid electrical utility bills and loss of rent for June 01, 2019 to June 15, 2019.

At the hearing, the Agent withdrew the request for compensation for unpaid electrical utility bills and only sought \$1,050.00 in rent for June 01, 2019 to June 15, 2019.

A written tenancy agreement was submitted as evidence. The tenancy started February 01, 2019 and was for a fixed term ending January 31, 2020. Rent was \$2,100.00 per month due by the first day of each month. The Tenants paid a \$1,050.00 security deposit and \$1,050.00 pet damage deposit. The agreement is signed by the Tenants and for the Landlord.

The Agent testified as follows.

The Tenants only paid a portion of May rent. The Landlord issued the Tenants a 10 Day Notice. The Landlord was issued an Order of Possession for the rental unit and Monetary Order for May rent on June 03, 2019 on File Number 1. The Monetary Order was for \$1,100.00. The Landlord used the pet damage deposit and part of the security deposit towards this Monetary Order. Therefore, the Landlord currently holds \$1,000.00 of the security deposit.

The Landlord served the Tenants with the Order of Possession in person June 03, 2019. The Tenants did not vacate until June 09, 2019. The Tenants never paid June rent.

The parties did move-in and move-out inspections.

The Tenants provided their forwarding address by email June 12, 2019. This email is in evidence.

The Landlord posted the unit for rent on a rental website. The Agent does not know when this occurred but assumes it was done when the Order of Possession was received. The unit was re-rented on June 10<sup>th</sup> for June 15<sup>th</sup>. The unit was posted and rented for the same rent amount as the Tenants were paying.

The Landlord submitted an email from the Tenants dated June 10, 2019 stating they had vacated the rental unit.

### Analysis

Section 7(1) of the *Act* states that, if a tenant does not comply with the *Act*, regulations or their tenancy agreement, the non-complying tenant must compensate the landlord for loss that results. Section 7(2) of the *Act* states that the landlord who claims compensation for damage or loss that results from the tenant's non-compliance must do whatever is reasonable to minimize the damage or loss.

Section 26(1) of the *Act* requires tenants to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;

- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Given the Agent’s testimony that the Tenants participated in move-in and move-out inspections, I do not find they extinguished their right in relation to the security deposit under sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished their right to the security deposit under sections 24 or 36 of the *Act* as extinguishment only relates to claims for damage to the rental unit.

Based on the undisputed testimony of the Agent and email submitted, I accept that the Tenants vacated the rental unit June 09, 2019. Based on the undisputed testimony of the Agent and email submitted, I accept that the Tenants provided the Landlord with their forwarding address June 12, 2019.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from June 12, 2019 to repay the security deposit or file an application for dispute resolution claiming against the security deposit. The Application was filed June 24, 2019, within the time limit.

Based on the written tenancy agreement, I accept the Tenants were obligated to pay \$2,100.00 in rent each month by the first day of each month.

I have accepted that the Tenants resided in the rental unit until June 09, 2019. The Tenants were required to pay rent while they resided in the rental unit, even if the tenancy had ended and they were overholding as stated in section 57 of the *Act*.

There is no evidence before me that the Tenants had a right to withhold rent under the *Act*.

The Tenants were required to pay rent for June 01, 2019 to June 09, 2019. I accept the undisputed testimony of the Agent that the Tenants did not pay rent for June. The Landlord is entitled to recover unpaid rent for this period.

In relation to rent for June 10, 2019 to June 15, 2019, I find the Tenants breached the *Act* and their tenancy agreement by failing to pay rent and thus incurring a 10 Day Notice which ended the tenancy prior to the end of the fixed term. I find the Tenants are responsible for the Landlord's loss of rent during the fixed term. I accept the undisputed testimony of the Agent that the unit was not re-rented until June 15, 2019 and therefore the Landlord lost rent for June 10, 2019 to June 14, 2019. I accept the undisputed testimony of the Agent that the Landlord posted the unit for rent on a rental website. I find this must have been done immediately as I accept that a new tenant agreed to rent the unit June 10<sup>th</sup> for June 15<sup>th</sup>, very shortly after the Tenants vacated. I find the Landlord mitigated their loss.

I find the Landlord is entitled to rent for June 01, 2019 to June 14, 2019. I do not accept that they are entitled to rent for June 15, 2019 given a new tenancy started this date and the new tenant would have paid rent for this date. The Landlord is entitled to \$980.00 for June rent.

Given the Landlord was successful in this application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

The Landlord is entitled to monetary compensation in the amount of \$1,080.00. The Landlord can keep the remaining \$1,000.00 of the security deposit pursuant to section 72(2) of the *Act*. Pursuant to section 67 of the *Act*, I issue the Landlord a Monetary Order for the remaining \$80.00.

### Conclusion

The Landlord is entitled to monetary compensation in the amount of \$1,080.00. The Landlord can keep the remaining \$1,000.00 of the security deposit. I issue the Landlord a Monetary Order for the remaining \$80.00. This Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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: October 04, 2019

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Residential Tenancy Branch