



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC

### Introduction

On June 11, 2019, the Tenants applied for dispute resolution under the Residential Tenancy Act seeking money owed or compensation for damage or loss under the *Residential Tenancy Act* (*“the Act”*), regulation, or tenancy agreement.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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.

### Issues to be Decided

- Are the Tenants entitled to compensation for damage or loss?
- Are the Tenants entitled to recover the cost of the filing fee?

### Background and Evidence

The Tenants provided affirmed testimony that in early April 2019 they responded to the Landlord’s advertisement of a studio rental unit. The Tenants and the Landlord met on April 6, 2019. The parties discussed the terms and conditions of tenancy and that rent would be \$1,775.00 each month to be paid by the first day of each month. One week

later the Tenants received an email from the Landlord that stated "the place is yours". The Tenants testified that the studio unit is approximately 650 square feet.

The Tenants' testified that on April 13, 2019, they sent the Landlord an electronic money transfer in the amount of \$1,775.00 which was for the security deposit and half a month's rent for occupancy to start on May 15, 2019. The Landlord accepted the money transfer on April 16, 2019.

On April 22 the Tenant was concerned that the Landlord had not sent the agreement for signature, and the Tenants were concerned because they had paid, but had not received the keys. The Tenants testified that the Landlord responded that he is not concerned that the agreement has not been signed and stated "the place is yours".

The Tenants testified that on April 26, 2019 the Landlord provided the tenancy agreement and addendum for their signature. The Tenants testified that they signed the documents on May 7, 2019 and returned them to the Landlord. The Tenants provided a copy of the tenancy agreement and addendum.

The Tenants testified that the next day, on May 8, 2019, the Landlord informed them that they were supposed to pay June rent upon signing the agreement. The Tenant informed the Landlord that they would pay June rent when it was due on June 1, 2019.

The Tenants testified that the Landlord informed them that he is returning the deposits that he had received and backed out of the tenancy agreement. The Tenants testified that the tenancy addendum that the Landlord provided them on April 26, 2019 contained a term that states "*This agreement is on the condition that June1 rent of \$1775 is paid on the day upon signing*".

The Landlord returned the amount of \$1,775.00 to the Tenants on May 8, 2019.

The Tenants testified that they had already given notice to end their existing tenancy and that Landlord had found a new tenant. The Tenants testified that they were forced to quickly find a new tenancy and they moved into a unit that they normally would not have taken.

In response to the Tenants' testimony, the Landlord testified that he agrees with what the Tenants have said.

The Landlord testified that when he offered to bring the tenancy agreement to Vancouver and meet with the Tenants, they declined the offer and this gave him cause for concern. He testified that when he was organizing the addendum he added terms, including the condition that June rent is due upon signing. He testified that on May 7, 2019, he asked the Tenants for an e-transfer for June rent and they did not pay.

The Landlord testified that he cannot afford to have a party rent his property and not make ends meet. He stated that he was concerned that their plan to rent and commute was not sustainable.

### Tenants Monetary Claims

The Tenants are seeking compensation in the amount of \$4,284.00 which is the difference between the rent they were paying in their old rental unit and their present rental unit for a period of six months. The Tenants testified that their old rent was \$936.00 each month and their new rent is \$1650.00 each month. The Tenant's provided a letter from their former Landlord that indicates the Tenants were paying monthly rent of \$936.00. The Tenants provided a copy of a tenancy agreement dated May 21, 2019, that indicates they are living in Vancouver and are now paying monthly rent in the amount of \$1,650.00 each month for a one bedroom unit.

The Tenants are also seeking compensation for loss of their art studio rental. The tenants are seeking compensation of \$1,393.00 which amounts to \$232.00 each month for six months. The Tenants testified that they gave up the studio when they accepted the tenancy.

The Tenants are also seeking compensation in the amount of \$10,650.00 for an illegal eviction. The Tenants testified that the claim amount is the amount of their current rent for a six month period. The Tenant's submitted that they have suffered psychological harm due to the Landlords actions and because they were not permitted to move into the unit in their chosen community.

In response to the Tenants' claims, the Landlord testified that he does not agree to pay compensation to the Tenants. The Landlord submitted that the tenancy agreement was not finalized prior to when the Tenant signed the tenancy agreement and addendum.

The Landlord testified that the Tenants claim for loss of use of the studio space has nothing to do with the tenancy arrangement.

In response to the Tenants' claim to be compensated for an illegal eviction, the Landlord testified that the Tenants could have found another rental in the community and he does not agree that the Tenants are entitled to compensation.

### Analysis

The Act defines a tenancy agreement as follows:

*"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.*

Section 5 of the Act provides:

- (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.*
- (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.*

Section 16 of the Act provides that 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.

Section 26 (1) of the Act provides that 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.

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation, or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and,
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 7 of the Act provides,

*if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The Residential Tenancy Policy Guideline # 16 Claims in Damages states:

*An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.*

*An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:*

*“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.*

Section 67 of the Act provides that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Based on the above, the testimony and evidence of the parties, and on a balance of probabilities, I find as follows:

I find that the parties agreed upon the term and conditions of the tenancy and entered into a tenancy agreement on April 16, 2019 which is the date the Landlord accepted the money transfer for May 2019 rent and the security deposit of \$887.50.

I accept that the Tenants signed the tenancy agreement and addendum on May 7, 2019. However, the Act provides that a Tenant must pay the rent when it is due under the tenancy agreement. The tenancy agreement indicates that rent is due to be paid by the first day of each month. I find that the Landlord cannot demand that rent be paid earlier than what is stipulated in the tenancy agreement. I find that the Landlord cannot contract outside the Act. I find that the new condition of tenancy that required the Tenants pay June rent early, after the Landlord had accepted rent and the security deposit on April 16, 2019, is not an enforceable term and is of no effect. The rights and obligations of the Landlord and Tenant began on April 16, 2019.

I find that the Landlord breached the tenancy agreement by preventing the Tenants from moving into the rental unit. I find that the Landlord did not have a legal basis for failing to follow through with his obligation to provide the tenancy. I find that the Landlord must compensate the Tenants for the damage or loss that resulted.

I have considered the Tenants claim to be compensated in the amount of \$4,284.00 which is the difference between the rent they were paying in their old rental unit and their present rental unit for a period of six months.

I am not in agreement with the basis of the Tenants claim that compensation should be the difference of monthly rent from their previous rental and their current rental. I find that the Tenants loss should be related to the Landlords breach of the tenancy agreement for what they would have paid for rent; and the amount of rent they are currently paying. I note that the Tenants are currently paying \$1,650.00 which is less monthly rent than the \$1775.00 they would have paid. I have also considered that when the Landlord improperly backed out of the tenancy agreement on May 8<sup>th</sup> for the tenancy to begin on May 15, 2019; the Tenants were put into a position where they had very little time to find a new suitable place to rent.

I find that the Tenants have suffered a loss due to the breach of the Landlord; however, establishing the value of the Tenants loss is not straightforward. I find that in the circumstances it is reasonable to award the Tenants nominal damages due to the Landlords breach of the Tenants' rights under the tenancy agreement. I award the Tenant's the amount of \$500.00.

I have considered the Tenants claim to be compensated for the loss of the art studio. Compensation under the Act is limited to residential tenancies. I find that the Landlord is not responsible to compensate the Tenants for their choice to end a commercial agreement for the rental of an art studio space. The Tenants request to be compensated for this loss is dismissed.

I have considered the Tenants' claim to be compensated due to the illegal eviction and the psychological harm it caused them. The Tenant's did not provide any medical records or other documentation sufficient to prove that they suffered psychological harm. The compensation that the Tenants are seeking appears to be punitive and more in line with an administrative penalty under the *Act*. I do not have the authority to adjudicate administrative penalties. The dispute resolution process is not the mechanism for seeking administrative penalties. The Tenants should call the Residential Tenancy Branch and speak with an Information Officer if they want to

pursue an administrative penalty. The Tenants request to be compensated for this claim is dismissed.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenants were partially successful with their application, I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution.

In total, I award the Tenants a monetary order in the amount of \$600.00. This monetary order must be served on the Landlord and may be enforced in Provincial Court.

### Conclusion

The Landlord breached the tenancy agreement by preventing the Tenants from moving into the rental unit. I find that the Landlord did not have a legal basis for failing to provide the tenancy. I find that the Landlord must compensate the Tenants for the damage or loss that resulted.

I grant the Tenants a monetary order in the amount of \$600.00. This order must be served on the Landlord and may be enforced in Provincial 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 *Residential Tenancy Act*.

Dated: October 10, 2019

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Residential Tenancy Branch