



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCL-S, MNRL-S, FFL

### Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for monetary compensation, compensation for unpaid rent, to retain the security deposit towards compensation owed, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

An agent for the Landlord (the “Landlord”) was present for the teleconference hearing as was the Tenant. The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Landlord’s evidence. The Landlord stated that they did not receive a copy of the Tenant’s evidence and the Tenant confirmed that while it was uploaded to the online system of the Residential Tenancy Branch, it was not served to the Landlord.

As the Tenant’s evidence was not served to the Landlord as required by the *Residential Tenancy Branch Rules of Procedure*, the Tenant’s evidence is not accepted and will not be considered in this decision.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have considered all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch 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

Is the Landlord entitled to monetary compensation?

Is the Landlord entitled to compensation for unpaid rent?

Should the Landlord be authorized to retain the security deposit towards compensation found to be owing?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy which were confirmed by the tenancy agreement submitted into evidence. The tenancy started on September 1, 2018. Rent in the amount of \$1,450.00 was due on the first day of each month. The Tenant paid a security deposit of \$725.00 and a key fob deposit of \$50.00 at the start of the tenancy. The Landlord confirmed that they are still holding an amount of \$775.00 and that the fob deposit can be returned as the Tenant provided the keys to the Landlord. The Tenant moved out on July 31, 2019.

The Landlord has applied for compensation for unpaid rent for the period of August 1 to August 14, 2019. The Landlord testified that they received notice from the Tenant on July 15, 2019 that she would be moving out at the end of the month. The Landlord submitted a copy of an email from the Tenant dated July 15, 2019 in which the Tenant states that she will be moving out by August 1, 2019. The Landlord responds by email on July 15, 2019 to confirm that the Tenant's last day in the unit will be July 31, 2019, which is confirmed through a response from the Tenant.

The Landlord stated that they advertised the rental unit for re-rental right away and on July 19, 2019 were able to sign a new tenancy agreement set to begin on August 15, 2019. The Landlord submitted a copy of the tenancy agreement signed with the new occupants on July 19, 2019 which indicates a tenancy start date of August 15, 2019.

The Landlord submitted that it was difficult to find a new occupant for the rental unit for August 1, 2019 due to not receiving notice from the Tenant until July 15, 2019.

The Landlord stated that the Tenant was in a fixed term tenancy agreement set to end on August 31, 2019 which was confirmed by the tenancy agreement submitted into evidence. As such, she stated that the Tenant ended the tenancy early and as they were not able to re-rent the unit until August 15, 2019, the Tenant is responsible for rent for the first 14 days of August 2019.

The Landlord filed the application claiming \$704.84 for rent for this period. However, at the hearing the Landlord stated that the amount is actually \$654.84 which is the pro-rated rent amount of \$1,450.00 calculated for 14 days.

The Tenant testified that she had to move out prior to the end of the fixed term tenancy due to the condition of the rental unit. She referenced that the fridge did not work and also stated that there were issues with insects in the rental unit.

The Tenant testified that she provided verbal notice to the Landlord around June 1, 2019 that she would be moving out and then notice by email around July 15, 2019. She stated that there was no conversation with the Landlord about owing rent for August 2019 and that she had assumed that the Landlord would be able to rent the unit for August 1, 2019. The Tenant stated that the Landlord began showing the rental unit right away after receiving her notice.

The Landlord has also claimed \$725.00 as liquidated damages due to the Tenant moving out prior to the end of the fixed term. The Landlord referenced a clause in the tenancy agreement in which the following is written:

*If the Tenant terminates the tenancy agreement before the end of the original term, the Landlord may, at the Landlord's option, treat this Agreement at an end and in such event the sum of \$725.00 shall be paid by the Tenant to the landlord as liquidated damages and not as a penalty. The payment by the Tenant of the said liquidated damages to the Landlord is agreed to be in addition to any other right or remedies available to the Landlord.*

The Landlord stated that as the Tenant broke the lease, the Landlord is entitled to keep the security deposit amount of \$725.00. In an email dated July 18, 2019 submitted in the Landlord's evidence, the Tenant asks if she will receive her security deposit back. The Landlord responds by email on July 19, 2019 and responds no, as the Tenant is breaking the lease.

Regarding the security deposit, the parties agreed that the Tenant's forwarding address was provided on the Condition Inspection Report at move-out on July 31, 2019. A copy of the inspection report was submitted into evidence.

Both parties confirmed that the Tenant did not agree to any deductions from the security deposit.

### Analysis

Based on the testimony and evidence before me, I find as follows regarding the Landlord's monetary claims:

As the Landlord has claimed unpaid rent, I refer to Section 45(2) of the *Act* which references ending a fixed term tenancy as follows:

- (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
  - (a) is not earlier than one month after the date the landlord receives the notice,
  - (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
  - (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

As stated, a tenant must provide at least one month notice to end the fixed term and cannot end the tenancy prior to the end date as stated in the tenancy agreement. Therefore, the Tenant's notice on July 15, 2019 would end the tenancy on August 31, 2019; the end of the fixed term as per the tenancy agreement.

Although the Tenant testified as to issues with the rental unit, I am not satisfied that the Tenant had cause to end the fixed term tenancy early, and instead find that she entered into a fixed term tenancy agreement that was set to end on August 31, 2019.

As such, the Tenant remains responsible for rent throughout the remainder of the fixed term and the Tenant would owe rent of \$1,450.00 as due on August 1, 2019. However, I also note that the Landlord has a duty to minimize a potential loss as stated in Section 7 of the *Act*.

I accept the testimony of the Landlord that they advertised the rental unit right away which is supported by their evidence which shows a new tenancy agreement signed on July 19, 2019. I therefore find that the Landlord took steps to minimize their loss of rental income for August 2019 and were able to find new tenants for August 15, 2019. However, as the Landlord was not able to re-rent the unit for August 1, 2019, I find that the Tenant is responsible for compensating the Landlord for this loss due to ending the fixed term tenancy early.

Although the Landlord claimed an amount of \$704.84 on their application, I accept their testimony and calculations that rent for 14 days of August is \$654.84 and therefore award this amount to the Landlord.

Regarding the liquidated damages fee claimed by the Landlord, I refer to *Residential Tenancy Policy Guideline 4* which provides a definition of liquidated damages as follows:

*A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the 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.*

This policy guideline also states the following regarding a liquidated damages fee in relation to a security deposit:

*A clause which provides for the automatic forfeiture of the security deposit in the event of a breach will be held to be a penalty clause and not liquidated damages unless it can be shown that it is a genuine pre-estimate of loss.*

In this matter, I find that the liquidated damages charged by the Landlord is more along the lines of a penalty than a genuine pre-estimate of the costs associated with re-rental of the unit. Several times during the hearing the Landlord referenced keeping the security deposit due to the break of a fixed term agreement, instead of referencing a liquidated damages clause.

I found that this testimony was also supported by an email from the Landlord submitted in their evidence dated July 19, 2019 in which the Landlord states that the Tenant will

not receive the security deposit back due to breaking the agreement, instead of clarifying that the liquidated damages is a separate issue from the security deposit.

I also note that the liquidated damages fee is exactly the amount of the security deposit, which further lends itself to be a penalty instead of a genuine estimate of the costs incurred when a fixed term tenancy is ended early. I find insufficient evidence from the Landlord to establish that the amount of \$725.00 is a genuine pre-estimate of the costs incurred with re-rental of the unit. Therefore, I am not satisfied that the amount claimed fits the definition of liquidated damages and I decline to award this amount. This claim is dismissed, without leave to reapply.

As the Landlord was partially successful with their claim, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee paid for the Application for Dispute Resolution in the amount of \$100.00.

Regarding the security deposit, as stated in Section 38(1) of the *Act*, a landlord has 15 days from the later of when the tenancy ends or when the forwarding address is provided in writing to return the deposit or file a claim against it. The parties agreed that the tenancy ended, and the Tenant's forwarding address was provided on July 31, 2019. As the Landlord filed their application on August 13, 2019, I find that they applied within the time allowable under the *Act*. Therefore, the Landlord does not owe the Tenant double the deposit and may retain the security deposit towards compensation owed.

As the Landlord agreed that they also had a fob deposit paid by the Tenant in the amount of \$50.00, and offered to return it, this will also be dealt with through this application. As the amount owed to the Landlord is less than the amount of the security deposit and fob deposit, the Landlord is ordered to pay the Tenant the amount outlined below:

Return of security deposit	\$725.00
Return of fob deposit	\$50.00
<i>Less August 1-14, 2019 rent</i>	<i>(\$654.84)</i>
<i>Less filing fee</i>	<i>(\$100.00)</i>
<b>Total owing to Tenant</b>	<b>\$20.16</b>

### Conclusion

Pursuant to Sections 38, 67 and 72 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of **\$20.16** for the return of the security deposit and fob deposit after

deductions as outlined above. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: December 04, 2019

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Residential Tenancy Branch