



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL-S, FFL

### Introduction

On September 12, 2019 the Landlord submitted an Application for Dispute Resolution (the “Application”), seeking relief pursuant to the *Residential Tenancy Act* (the “Act”) for the following:

- a monetary order for unpaid rent;
- an order granting authorization to retain the security deposit; and
- an order granting recovery of the filing fee.

The Tenant as well as the Landlord attended the hearing at the appointed date and time and provided affirmed testimony.

The Landlord testified that he served his Application and documentary evidence package to the Tenants by registered mail on September 19, 2019. The Tenant confirmed receipt. The Tenant testified that she served the Landlord with her documentary evidence by registered mail on January 6, 2019. The Landlord confirmed receipt. Pursuant to sections 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Should the Landlord be authorized to apply the security deposit against their claim, in accordance with Sections 38 and 72 of the *Act*?
3. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed that the tenancy began on December 30, 2017. During the tenancy the Tenants were required to pay rent in the amount of \$2,400.00 to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$1,200.00 which the Landlord continues to hold. The Landlord stated that the Tenants moved out of the rental unit on September 1, 2019. The Tenant stated that they vacated the rental unit on August 31, 2019. The Landlord submitted a copy of the tenancy agreement in support.

The Landlord testified that he received a notice to end tenancy from the Tenants via email on August 7, 2019 indicating that the Tenants were seeking to end the tenancy as early as September 1, 2019. The Landlord testified that he advertised the rental unit immediately, however could not secure a new occupant in time for September 1, 2019. The Landlord testified that the Tenants did not provide the Landlord with a full month's notice to end tenancy.

The Tenant stated that she sent the Landlord an email on August 14, 2019 requesting that the Landlord accept the end of the tenancy on September 15, 2019. The Tenant stated that the Landlord accepted the end of tenancy on that date. Both parties provided a copy of the email exchange between them which states;

Tenant:

*...Would you accept Sept 15<sup>th</sup>, if you do not find a candidate to move in earlier...*

Landlord:

*...Yes I would for you.*

The Tenant stated that the Landlord further communicated to the Tenants on August 15, 2019 that he has found new occupants to move in on September 1, 2019. The Tenant stated that she made moving arrangements based on this communication and she does not feel as though the Tenants should be held responsible for paying any additional rent.

The Landlord testified that on August 17, 2019 he notified the Tenants that the new occupants did not show up to sign the agreement, therefore he would have to re-advertise the rental unit. The Landlord stated that no one moved into the rental unit until November 1, 2019 and is therefore seeking monetary compensation for the unpaid rent for the month of September 2019 in the amount of \$2,400.00. The Landlord is seeking to retain the Tenants' security deposit in partial satisfaction of their claim, as well as the return of the filing fee paid to make the Application.

### Analysis

Based on the affirmed documentary evidence and oral testimony, and on a balance of probabilities, I find:

According to Section 45 (1) of the *Act*, a tenant may end a periodic 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, and
- (b) 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.

In this case, the parties agreed that the Tenants provided the Landlord with their notice to end tenancy on August 7, 2019 before the tenancy ended on September 1, 2019. I accept that the Tenants did not provide the Landlord with proper notice pursuant to Section 45(1) of the *Act*.

Section 44(1)(d) states that a tenancy ends if the landlord and tenant agree in writing to end the tenancy.

I find that the Tenant specifically asked the Landlord on August 14, 2019 if he would accept the end of the Tenancy effective September 15, 2019, to which the Landlord agreed. In this case, I find that the parties mutually agreed to end the tenancy effective September 15, 2019. I find that the Tenant had no further obligation to pay rent to the Landlord beyond the end of the mutually agreed up end of the tenancy.

In light of the above, I find that the Landlord has established an entitlement to compensation for loss of rent from September 1 to the 15, 2019 in the amount of \$1,200.00.

Having been partially successful, I find the Landlord is entitled to recover the filing fee paid to make the Application. I also find it appropriate in the circumstances to order that the Landlord retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$100.00, which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
Unpaid Rent Sept 1-15, 2019:	\$1,200.00
Filing fee:	\$100.00
LESS security deposit:	(\$1,200.00)
<b>TOTAL:</b>	<b>\$100.00</b>

### Conclusion

The Landlord is granted a monetary order in the amount of \$100.00. The order should be served to the Tenants as soon as possible and may be filed in and enforced as an order of the Provincial Court of BC (Small Claims).

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: January 16, 2020

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Residential Tenancy Branch