



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNDL-S, MNRL-S, FFL

### **Introduction**

This hearing was convened in response to the Landlords' Application for Dispute Resolution, in which the Landlords applied for a monetary Order for unpaid rent, for a monetary Order for damage to the rental unit; to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on October 25, 2020 the Dispute Resolution Package and the evidence the Landlords submitted with the Application were sent to the Tenant, via registered mail, to the service address on the Application for Dispute Resolution. He stated that at the end of the tenancy the Tenant told him she was moving back to that service address, which is the Tenant's mother's address. He stated that he did not receive a forwarding address in writing.

The Landlord submitted Canada Post documentation that corroborates his testimony that documents were sent on October 25, 2020. The Landlord stated that the Canada Post website shows this package was delivered on November 04, 2020.

On the basis of the undisputed evidence, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*. As the documents were served in accordance with the *Act*, the hearing proceeded in the absence of the Tenant and the evidence was accepted as evidence for these proceedings.

The Landlord was given the opportunity to present relevant oral evidence and to make relevant submissions. He affirmed that he would provide the truth, the whole truth, and nothing but the truth at these proceedings.

### Issue(s) to be Decided

Are the Landlords entitled to compensation for damage to the rental unit, to compensation for unpaid rent/lost revenue, and to keep all or part of the security deposit?

### Background and Evidence

The Landlord stated that:

- the parties signed a tenancy agreement;
- the tenancy agreement was for a fixed term between December 01, 2018 and November 30, 2019;
- the Tenant agreed to pay monthly rent of \$1,000.00 by the first day of each month;
- the Tenant paid a security deposit of \$500.00;
- on July 10, 2019 he received a text message from the Tenant in which she informed him she would like to move out “as soon as possible”;
- he told the Tenant she could move out of the rental unit on August 31, 2019, providing he could find another Tenant for September 01, 2019;
- the rental unit was vacated on August 31, 2019;
- in early August of 2019 the rental unit was advertised on a popular website;
- the rental unit was not re-rented until October 15, 2019; and
- the Landlords are seeking compensation for lost revenue for the period between September 01, 2019 and October 14, 2019.

The Landlords are seeking compensation, in the amount of \$300.00, for cleaning the rental unit and repairing some wall damage. The Landlords submitted photographs that show the wall was damaged and that the unit required cleaning at the end of the tenancy. The Landlord stated that the damage to the wall occurred during the tenancy. He stated that he and a friend spent approximately 10 hours cleaning the unit and repairing the damage.

### Analysis

On the basis of the undisputed evidence, I find that the parties entered into a fixed term tenancy agreement, the fixed term of which ended on November 30, 2019, and that the Tenant agreed to pay rent of \$1,000.00 by the first day of each month.

Section 45(2) of the *Act* permits a tenant to end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and 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 this was a fixed term tenancy, the fixed term of which did not end until November 30, 2019, I find that the Tenant did not have the right to end this tenancy, pursuant to section 45(2) of the *Act*, until November 30, 2019. I therefore find that any written notice to end the tenancy served by the Tenant would not serve to end the tenancy until November 30, 2019.

On the basis of the undisputed evidence, I find that the Tenant vacated the rental unit on August 31, 2019.

No evidence was submitted that the parties agreed, in writing, to end the tenancy on August 31, 2019.

On the basis of the undisputed evidence, I find that the Landlords made reasonable efforts to re-rent the unit for September of 2019 once they became aware that the Tenant would like to vacate the rental unit prior to the end of the fixed term. On the basis of the undisputed evidence, I find that the Landlords were not able to re-rent the unit until October 15, 2019.

As the Tenant did not comply with section 45 of the *Act* when she vacated the rental unit and the Landlords experienced lost revenue for the period between September 01, 2019 and October 14, 2019 that they would not have experienced if the tenancy continued, I find that the Tenant must compensate the Landlords for lost revenue for this period, in the amount of \$1,500.00, pursuant to section 67 of the *Act*.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to leave the rental unit in reasonably clean condition at the end of the tenancy and to repair the walls that were damaged during the tenancy. I therefore find that the Landlords are entitled to \$300.00 in compensation for the 10 hours the male Landlord and a friend spent cleaning and repairing the rental unit.

I find that the Landlords' Application for Dispute Resolution has merit and that the Landlords are entitled to recover the fee for filing this Application for Dispute Resolution.

### Conclusion

The Landlords have established a monetary claim, in the amount of \$1,900.00, which includes \$1,500.00 in lost revenue, \$300.00 for repairing and cleaning the unit, and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$500.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance \$1,400.00. In the event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims 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 *Act*.

Dated: March 15, 2020

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Residential Tenancy Branch