



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      Landlords: MNDCL-S, MNRL-S, FFL  
Tenant: MNSD, FFT

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlords’ Application for Dispute Resolution was made on November 7, 2019, (the “Landlords’ Application”). The Landlords applied for the following relief, pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss;
- a monetary order for unpaid rent for the Landlords;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The Tenant’s Application for Dispute Resolution was made on November 18, 2019, (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- an order granting the return of all or part of the security deposit; and
- an order granting recovery of the filing fee.

The Landlord and the Tenant attended the hearing at the appointed date and time. The Landlord testified that he served his Application and documentary evidence package to the Tenant by registered mail on November 14, 2019. The Tenant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The Landlord testified that he served an additional evidence package to the Tenant by registered mail on February 29, 2020. The Tenant stated that she did not receive any additional documents from the Landlord. The Landlord provided the registered mail receipts, as well a photographic evidence in support confirming the registered mailing took place on February 29, 2020. Based on the oral and written submissions of the Landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Landlord's documentary evidence on March 5, 2020, the fifth day after their registered mailing.

The Tenant stated that she served the Landlord with her documentary evidence by registered mail, however, could not recall which date the mailing took place. The Landlord confirmed receipt. Pursuant to section 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.

### Preliminary Matters

At the start of the hearing, the Landlord stated that he would like to amend his money claim from \$28,750.00 to \$8,150.00. The Landlord's Application was amended accordingly.

### Issue(s) to be Decided

1. Are the Landlords entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Are the Landlords entitled to a monetary order for money owed or compensation for damage or loss pursuant to Section 67 of the *Act*?
3. Are the Landlords entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?
4. Are the Landlords entitled to retain the Tenant's security deposit pursuant to Section 38 of the *Act*?
5. Is the Tenant entitled to an order granting the return of the security deposit, pursuant to Section 38 of the *Act*?

6. Is the Tenant entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

### Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. The parties testified that they came together on October 22, 2019 and agreed to and signed a fixed term tenancy agreement which was meant to begin on November 1, 2019 and end on October 31, 2020. The parties agreed that the Tenant would be required to pay rent in the amount of \$2,300.00 to the Landlord on the first day of each month. The Landlord collected a security deposit in the amount of \$1,150.00 as well as a pet damage deposit in the amount of \$1,150.00, for a total of \$2,300.00 in deposits currently being held by the Landlords.

The parties testified and agreed that a move in condition inspection report was completed on October 24, 2019 during which it was noted that aside from the rental being in new condition, there was some water damage on the baseboard and window frame below a window in the rental unit. The parties testified and agreed that the Landlord would make arrangements with a contractor to have damage repaired as it appeared as though the window was leaking.

The Landlord stated that the water damage was cosmetic in nature and that he made the necessary arrangements to have the damage repaired at the start of the tenancy. The Landlord stated that the Tenant chose not to occupy the rental unit as a result of the damage and provided the Landlord with her notice to end tenancy and her forwarding address on October 31, 2019. The Landlord stated that the window repair was completed on October 30, 2019 and that a follow up inspection was completed on November 6, 2019 which indicated that no further leak had occurred.

The Landlord stated that he immediately re-listed the rental unit for rent and conducted 8 showings to approximately 23 applicants throughout November, December 2019, and January 2020. The Landlord stated that these months typically generate less interest over the holiday season. The Landlord stated that he secured a new occupant on January 23, 2020 who took possession of the rental unit on February 1, 2020.

The Landlord stated that he is seeking liquidated damages in the amount of \$1,150.00 as the parties agreed to the clause in the addendum on October 22, 2019. Furthermore, the Landlord is seeking the loss of rent for November, December 2019, and January

2020 as the Tenant broke the fixed term tenancy agreement prior to taking possession of the rental unit. If successful, the Landlord is seeking the return of the filing fee.

In response, the Tenant stated that she signed the fixed term tenancy agreement with the understanding that the rental unit was in new condition. The Tenant stated that the condition inspection revealed some water damage under one of the windows in the rental unit. The Tenant stated that the Landlord assured her that the repairs would be made at the start of the tenancy. The Tenant stated that she found issues with two other windows in the rental unit as well.

The Tenant stated that she did not want to assume possession of the rental unit and have to endure repairs at the start of her tenancy. The Tenant was concerned that the water damage would cause mold issues and may pose a health risk. The Tenant stated that the Landlord did not adhere to the timelines for repairs which caused the Tenant to be further concerned about the situation. As such, the Tenant provided the Landlord with her notice to end tenancy on October 31, 2019 as well as her forwarding address.

The Tenant is seeking the return of her security and pet damage deposit, as well as the return of the filing fee paid to make the Application.

### Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and

4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlords to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Landlords did what was reasonable to minimize the damage or losses that were incurred.

According to Section 16 of the *Act*; 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.

According to Section 45 of the *Act*, 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.

I accept that the parties entered into a fixed term tenancy on October 22, 2019 which was meant to start on November 1, 2019 and end on October 31, 2020. The parties agreed that the Tenant provided her notice to end tenancy to the Landlord on October 31, 2019 indicating that she will not move into the rental unit and requested the return of her deposits. I accept that the Landlord placed an ad to re rent the unit, however was unable to find a new tenant for the month of November, December 2019, and January 2020.

Although the Tenant felt concerned about the water damage caused by a leaking window, I find that she had other remedies available to her at the time, such as making an application for an order requiring the Landlords to make repairs pursuant to Section 32 of the *Act*. I find that the Tenant violated the *Act* by ending their fixed term tenancy early without cause.

The Landlord is claiming \$1,150.00 for liquidated damages. According to the Residential Policy Guideline #4; 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.

I accept that the tenancy agreement signed by both parties contains a liquidated damages clause in the addendum to the agreement. During the hearing, the Landlord stated that the damages payable in the clause represents to cost of new tenant placement which is charged to the owner of the rental unit. As such, the Landlord is seeking to recover this cost.

In this case, I find that the parties agreed to the liquidated damages clause in the amount of \$1,150.00 at the time that the tenancy agreement was entered into. After finding that the Tenant breached the fixed term agreement, I find that the amount of liquidated damages agreed upon reflects a reasonable pre estimate of the loss associated with re-renting the rental unit. As such, I find that the Landlord is entitled to monetary compensation in the amount of \$1,150.00.

The Landlord is also claiming monetary compensation in the amount of \$6,900.00 as the Landlord was unable to re-rent the rental unit in November, December, and January 2020. The Landlord stated that he placed an ad to re-rent the rental unit immediately after receiving the Tenant's notice to end tenancy. The Landlord stated that he held 8 showing and found a new occupant for the rental unit who took possession on February 1, 2020.

In this case, I find that the Landlord provided sufficient evidence to support that they made reasonable efforts to re-rent the rental unit throughout November, December 2019, and January 2020, however was unable to secure a new occupant until February 2020. As such, I find that the Landlords have established an entitlement to monetary compensation in the amount of \$6,900.00.

Having been successful, I also find the Landlords are entitled to recover the \$100.00 filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlords retain the Tenant's security and pet damage deposits 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 \$5,850.00, which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
Liquidated Damages:	\$1,150.00
Unpaid rent:	\$6,900.00
Filing fee:	\$100.00
<i>LESS</i> security/pet deposits:	-( <i>\$2,300.00</i> )
<b>TOTAL:</b>	<b>\$5,850.00</b>

### Conclusion

Pursuant to section 67 of the Act, the Landlords are granted a monetary order in the amount of \$5,850.00. The monetary order must be served on the tenants and may be filed in and enforced as an order of the Provincial Court of British Columbia (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: March 30, 2020

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Residential Tenancy Branch