



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFL, MNDL-S, MNDCL-S

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on November 13, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage, compensation, or loss;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on April 7, 2020 as a teleconference hearing. Only the Landlord's Agent appeared at the scheduled date and time of the hearing. No one appeared for the Tenants. The conference call line remained open and was monitored for 30 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord's Agent and I were the only persons who had called into this teleconference.

The Landlord's Agent testified the Application package was served to the Tenants by registered mail on November 21, 2019 to the forwarding address that the Tenants provided to the Landlord. A copy of the Canada Post registered mail receipt was submitted in support. The Landlord's Agent stated that he served the Landlord's documentary evidence package to the Tenants by registered mail on March 9, 2020. The Landlord provided the registered mail receipts in support. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenants are deemed to have been served with the Landlord's Application on November 26, 2019 and documentary evidence on March 14, 2020, the fifth day after their registered mailings.

The Landlord's Agent was provided with a full 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 and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to retaining the security deposit, pursuant to Section 38, and 72 of the *Act*?
3. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

### Background and Evidence

The Landlord testified that the fixed term tenancy began on May 1, 2019 and was meant end on April 30, 2020. During the tenancy, the Tenants were required to pay rent in the amount of \$3,500.00 to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$1,750.00 which the Landlord continues to hold. The Landlord's Agent stated that the tenancy ended early on October 30, 2019 and he received the Tenants' forwarding address on October 30, 2019. The Landlord provided a copy of the tenancy agreement in support.

The Landlord is seeking monetary compensation in the amount of \$8,993.79 relating to liquidated damages, costs of damage repairs, cleaning costs, and Strata fines. The Landlord described their monetary claim on a monetary worksheet which is outlined below;

The Landlord's Agent stated that the onsite building manager and the Strata council advised the Landlord in July 2019 that the Tenants had been operating a short-term vacation rental in the rental unit. The Landlord's Agent stated that short-term vacation rentals are prohibited according to condition 15 of the tenancy agreement which specifically states that only the people listed in the agreement can occupy the unit. Furthermore, the Landlord's Agent stated that the Tenants have breached the Strata bylaws which has resulted in several Strata fines to be levied against the Landlord as a result of the Tenants operating the short-term vacation rental.

The Landlord's Agent stated that on August 9, 2019 the Landlord issued a caution notice to the Tenants regarding the short-term vacation rental. The Landlord submitted a copy of the caution notice in support. The Landlord's Agent stated that the Tenants did not comply with the caution notice which has resulted in the Landlord being fined \$500.00 per incident for a total of \$6,000.00 which the Landlord is claiming compensation for. The Landlord's Agent stated that the Landlord has attempted to have the fines reduced, however, the Strata has zero tolerance with respect to the operation

of short-term vacation rentals in the rental building. The Landlord provided a copy of the Strata fines and caution notice to the Tenants in support.

The Landlord's Agent stated that he subsequently served the Tenants with a One Month Notice to End Tenancy for Cause on September 17, 2019 with an effective vacancy date of October 31, 2019. The Landlord's Agent stated that even after having been served with the One Month Notice, the Tenants continued to operate the short-term vacation rental and another caution notice was served to the Tenants on October 22, 2019. The Landlord's Agent stated that the tenancy ended on October 30, 2019 as a result of the Tenants breaching the tenancy agreement the Act, and the Strata bylaws.

As such, the Landlord is seeking compensation for liquidated damages in the amount of \$1,750.00. The Landlord's Agent stated the parties had agreed at the start of the tenancy that the tenant will pay to the landlord the sum of one-half month's rent as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit.

The Landlord's Agent stated that on August 9, 2019, the Tenants' short-term vacation rental guest overflowed the toilet in the rental unit which cause some damage to the rental unit below. The Landlord's Agent stated that the costs to repair the damage drywall and paint was \$273.00. The Landlord provided a copy of the receipt in support. The Landlord's Agent stated that the Landlord also incurred a Strata fine in the amount of \$200.00 in relation to the incident.

The Landlord's Agent stated that during the move out inspection on October 30, 2019 he noticed some damage in the rental unit which consisted of; wall damage, carpet cleaning, light bulb replacement, key and visitor pass replacement. The Landlord's Agent stated that the total costs associated was in the amount of \$770.79. The Landlord provided receipts as well as a copy of the condition inspection report in support of the claims.

If successful, the Landlord is seeking the return of the \$100.00 filing fee paid to make the Application.

### Analysis

Based on the uncontested oral testimony and documentary evidence, 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 Landlord 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 Landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

The Landlord is claiming \$6,000.00 in relation to several Strata fines incurred by the Landlord as a result of the Tenants operating a short-term vacation rental in the rental unit. I find that the Landlord has provided sufficient evidence to demonstrate that the Tenants breached the tenancy agreement and the Strata bylaws by doing so. I find that the Landlord has incurred a loss of \$6,000.00 as demonstrated by the Strata fine notices provided. I am satisfied that the Landlord attempted to mitigate their loss by cautioning the Tenants and disputing the Strata fines. As such, I find that the Landlord has established an entitlement to monetary compensation in the amount of \$6,000.00.

The Landlord's Agent stated that as a result of the Tenants operating the short-term vacation rental, he subsequently served the Tenants with a One Month Notice to End Tenancy. The Landlord's Agent stated that the tenancy ended on October 30, 2019 as a result of the Tenants breaching the tenancy agreement the *Act*, and the Strata bylaws. As such, the Landlord is seeking compensation for liquidated damages in the amount of \$1,750.00.

Section 7 of the *Act* explains, "If a tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord 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."

*Residential Tenancy Policy Guideline #4* examines the issue of liquidated damages and notes, "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...If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent." This *Guideline* notes that a liquidated damages clause will be found to be valid if; the

sum demanded is not extravagant in comparison to the greatest loss that could follow a breach, if an agreement is to pay money and a failure to pay requires that a greater amount be paid, or if a single lump sum is to be paid on occurrence of several events, some trivial some serious.

After examining the Landlord's Application and the events which led to a violation of section 7 of the *Act*, I find that the Landlord is entitled to a monetary award of \$1,750.00. This amount is *not extravagant in comparison to the greatest loss that could follow a breach*, it is not an amount over and above the monthly rent, and it is not contingent on a series of several events. The Tenants violated the *Act* and therefore must pay the damages which have stemmed from such a breach.

The Landlord's Agent stated that on August 9, 2019, the Tenants' short-term vacation rental guest overflowed the toilet in the rental unit which cause some damage to the rental unit below. The Landlord's Agent stated that the costs to repair the damage drywall and paint was \$273.00. The Landlord provided a copy of the receipt in support. The Landlord's Agent stated that the Landlord also incurred a Strata fine in the amount of \$200.00 in relation to the incident.

I find that the Landlord provided sufficient evidence that the Tenants or their guest caused damage to the rental unit below as a result of a flood. As such I find that the Landlord is entitled to monetary compensation in the amount of \$473.00 for the cost of repairs and the Strata fine.

The Landlord's Agent stated that during the move out inspection on October 30, 2019, he noticed some damage in the rental unit which consisted of; wall damage, carpet cleaning light bulb replacement, key and visitor pass replacement in the amount of \$729.79. The Landlord provided receipts as well as a copy of the condition inspection report in support of the claims.

I find that the Landlord provided sufficient evidence to demonstrate that the rental unit required repairs, cleaning, lightbulb replacement as well as a missing key and visitor pass. As such, I find that the Landlord is entitled to monetary compensation in the amount of \$770.79.

Having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. I also find it appropriate in the circumstances to order that the Landlord retain \$1,750.00 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 \$7,343.79, which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
Strata Fines Short-Term Rental:	\$6,000.00
Liquidated Damages:	\$1,750.00
Damage/Fine Flood:	\$473.00
Damage/Cleaning/Key/Pass	\$770.79
Filing fee:	\$100.00
<i>Security Deposit:</i>	<i>-( \$1,750.00)</i>
<b>TOTAL:</b>	<b>\$7,343.79</b>

### Conclusion

The Landlord has established an entitlement to monetary compensation in the amount of \$7,343.79. 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 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: April 14, 2020

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Residential Tenancy Branch