



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, MNRL-S, FF

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for monetary loss or other money owed;
- a monetary order for unpaid rent;
- authority to keep the tenant's security deposit; and
- recovery of the filing fee paid for this application.

The landlord and the tenant attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties did not raise an issue about the service of the evidence and the landlord submitted that she served her application to the tenant by registered mail, providing the tracking number.

Thereafter the participants were provided the opportunity to present their affirmed evidence orally and to refer to relevant documentary, digital, and photographic evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to compensation from the tenant and to recover the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence and testimony, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

The written tenancy agreement submitted by the landlord shows a tenancy beginning September 1, 2019, for a fixed term to end on November 30, 2019. Monthly rent was \$1,750 and the landlord collected a security deposit of \$875, which she has retained.

The landlord's monetary claim is \$1,750 for loss of rental income for November 2019, and recovery of the filing fee of \$100.

In support of her monetary claim, the landlord submitted that the tenant wanted to change the date for ending the tenancy, and as a favour, agreed to let the tenant break the lease and leave earlier, so long as she was out by October 31, 2019.

Instead of leaving by October 31, 2019, the tenant remained in the rental unit beyond that date and was still moving out her personal property on November 2, 2019. The landlord submitted that she is entitled to the loss of rent for November 2019, as the tenant held over in the rental unit beyond their verbal agreement.

In response, the tenant submitted that the condo she purchased was not ready until November 4, 2019; however, the landlord had previously agreed that she could stay a couple of days longer, beyond October 31, 2019 as long as she paid a daily rate.

The tenant submitted said she did her best to move out by October 31, 2019, but understood their agreement was that she could move out as soon as possible and pay a daily rate.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

The Residential Tenancy Act defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

I find the purpose of a written tenancy agreement is to communicate to the parties the terms and conditions of the tenancy, which are then enforceable.

In the case, the landlord and tenant provided different versions of their verbal agreement as to when the tenancy could end earlier than the end of the fixed term. I find disputed oral evidence, without anything further, fails to prove the issue at hand.

As a result, I will defer to the written tenancy agreement, negotiated and signed by both parties. The written tenancy agreement shows that the tenancy would end and the tenant would vacate the rental unit on November 30, 2019. Instead, the tenant vacated in the first few days of November 2019, and did not pay rent for November.

I find the tenant is liable to the landlord for monthly rent under the terms of the tenancy agreement, subject to the landlord’s obligation to minimize her loss.

In the case before me, there was no dispute that the tenant breached the terms of her written tenancy agreement by ending the tenancy before November 30, 2019.

The undisputed evidence also showed that the tenant failed to pay rent for November 2019.

Due to the tenant’s breach, I therefore find that the landlord has established a monetary claim of \$1,850, comprised of \$1,750 for the unpaid rent for November 2019 and the recovery of the filing fee of \$100.

At the landlord’s request, I direct her to retain the tenant’s security deposit of \$875 in partial satisfaction of her monetary award of \$1,850. I therefore grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$975.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is advised that costs of such enforcement are subject to recovery from the tenant.

Conclusion

The landlord's application for monetary compensation is granted, she has been authorized to retain the tenant's security deposit of \$875 and she has been awarded a monetary order for the balance due, in the amount of \$975.

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 20, 2020

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Residential Tenancy Branch