



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      **MNDCL-S, MNDL-S, MNRL-S, FFL**

### Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

BCS attended for the tenants ("the tenant"). FM and MM, agents for the landlord, attended for the landlord ("the landlord").

At the outset, the landlord testified as to the correct corporate name of the landlord which is accordingly amended throughout.

The hearing was conducted by teleconference. Both parties attended the hearing and provided affirmed testimony. The hearing process was explained, and both parties had to opportunity to ask questions. Each party had the opportunity to make submissions, present documentary evidence, call witnesses and cross examine the other party.

Each party acknowledged receipt of the other party's evidentiary materials. Neither party raised issues of service. I find each party served the other in accordance with section 89 of the *Act*.

#### Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

#### Background and Evidence

The landlord provided the following uncontradicted testimony. The 1-year fixed term tenancy began on August 29, 2019 for monthly rent of \$2,321.00 payable on the first of the month. The tenant provided a security deposit and pet deposit totalling \$2,321.00 ("the deposit") which the landlord holds. The landlord submitted a copy of the signed tenancy agreement.

The tenant vacated on November 30, 2019 after providing one month's notice following a break-in at her unit at the end of October 2019. The tenant acknowledged she did not pay rent for the month of November 2019. The landlord issued a Ten-Day Notice which was served on the tenant on November 2, 2019; the tenant did not dispute the Ten-Day Notice.

The landlord testified that a condition inspection was conducted on moving in and moving out. The landlord submitted a copy of the report as evidence. The unit is noted to be in good condition in all relevant aspects on moving in. On moving out, the report noted that the unit required cleaning and the drywall required repair and paint touch-up. The agent of the landlord and the tenant signed the report on both moving in and the tenant refused to sign the report on moving out claiming that she had adequately cleaned the unit and it was "reasonably clean".

The landlord submitted many photographs taken at the time of the condition inspection report on moving out illustrating the need of the unit's cleaning and drywall repairs/touchup. The landlord testified that the unit had not been vacuumed, there was hair and dirt throughout, all appliances needed cleaning, and the toilet was dirty, among other things. She stated there were marks/damage to the drywall requiring repair, filling, sanding and painting.

The landlord testified the landlord paid for the cleaning and repair of the unit after the tenant vacated and submitted a receipt in the amount of \$420.00 for cleaning and repair/touchup costs for which the landlord seeks reimbursement.

The tenant submitted photographs taken on moving out to support her testimony that the unit was reasonably clean.

The addendum to the lease contained a liquidated damages clause in the amount of one month's rent (\$2,321.00). The clause stated that if the tenant ends the tenancy before the end of the term or is in breach of the agreement, the tenant must pay an equivalent of one month's rent as liquidated damages to cover the landlord's cost of re-renting the unit.

The agent at the hearing did not provide testimony or evidence as to the efforts to find replacement occupants during the month of November 2019 or after the tenant vacated. The agent explained that the unit was in a newly completed tower which had available new, previously unoccupied rentals when the unit became available. She stated the unit was not occupied until March 2020.

However, the agent testified that she did not have personal knowledge of the advertising efforts and assumed that all reasonable efforts to find replacement occupants were made. The agent asserted that the liquidated damages clause represented a genuine and reasonable pre-estimate of the landlord's administrative costs of advertising and re-renting the unit as a result of the early termination for which the tenant was responsible. The landlord submitted no documentary evidence to support this assertion.

The landlord stated that the tenant returned all fobs; however, one fob was believed to have been compromised or copied and possibly used in the unit's break in. The tenant acknowledged that the fob had been lost "for a while" and that she had requested it be cancelled before locating it and turning it back in to the landlord. The landlord stated

that the fob was not a reliable one any longer and had to be replaced. The landlord requested reimbursement of the expense of \$100.00. The tenant denied that the landlord has good reason to replace the fob.

The landlord requested authorization to apply the deposit to the award and to obtain reimbursement of the filing fee.

The landlord's claim is summarized as follows:

ITEM	AMOUNT
Cleaning/repair costs	\$420.00
Outstanding rent November 2019	\$2,321.00
Liquidated Damages	\$2,321.00
Replacement fob	\$100.00
Reimbursement of filing fee	\$100.00
(Less Deposit)	(\$2,321.00)
<b>Total Monetary Award Requested by Landlord =</b>	<b>\$2,941.00</b>

### Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

[www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement.

Section 7(1) of the Act provided that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

1. The claimant must prove the existence of the damage or loss.
2. Secondly, the claiming party must that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.
3. Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.
4. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

In this case, the onus is on the landlord to prove the landlord is entitled a claim for a monetary award.

I have considered all the evidence submitted by the landlord, including the receipts and the photographs showing the unit needed cleaning and repairs. The landlord was professional, credible and well-organized; testimony was well-supported by documentary evidence including photographs. I give considerable weight to the landlord's evidence. The pictures submitted by the landlord clearly show that the unit required cleaning and repairs. I give less weight to the tenant's testimony as she acknowledged she did not vacuum the unit and it was her first time renting; I find the tenant did not leave the unit "reasonably clean" as required.

Taking into account the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the unit needed cleaning and repairs when the tenant vacated, the fob was compromised, the tenant is responsible for the lack of cleanliness, the damage and the compromised fob, the landlord incurred the amount claimed in expenses, the landlord spent the amount of time claimed to clean and repair the unit, and the landlord took all reasonable steps to mitigate expenses. I find the landlord is entitled to a monetary award in the amount requested for this aspect of the claim in the amount of \$420.00 for cleaning/repairs and \$100.00 (fob).

### *Rent*

The landlord testified the tenancy was a fixed term tenancy and the tenant provided notice of her intention to vacate three months after the 1-year term began.

The tenant acknowledged she vacated the unit at the end of November 2019 before the end of the fixed term. She explained that she no longer felt “safe” in the unit after the break-in. The tenant acknowledged she did not pay rent for the final month she lived in the unit.

With some exceptions, a tenant is required to pay rent when it is due. I find that the tenant owes the landlord rent for the month of November 2020.

I accordingly allow the landlord reimbursement of \$2,321.00 representing rent for November 2019.

### *Liquidated Damages*

*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... There are a number of tests to determine if a clause is a penalty clause or a liquidated damages clause. These include:*

- A sum is a penalty if it is 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, the greater amount is a penalty.*
- If a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.*

*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.”*

The tenant acknowledged that the agreement contained a liquidated damages clause. However, the tenant stated that the landlord did not establish any costs or time in finding another occupant of the unit. The landlord said many places in the tower were available for rent and the unit would have been included in the advertising efforts for all, although the representatives at the hearing could not provide any details.

The landlord stated that the amount of liquidated damages was a reasonable estimate of the costs of advertising and locating a suitable tenant for the unit if the tenant vacated before the end of the term. The amount was a reasonable estimate at the beginning of the tenancy of the landlord's anticipated expenses.

However, the landlord did not prove any actual proof of expenses at the hearing and did not testify as to administrative costs.

The cost of re-renting a unit to a new tenant is part of the ordinary business of a landlord. Throughout the lifetime of a rental property, a landlord must engage in the process of re-renting to new tenants numerous times. However, one important reason why a landlord enters into a fixed-term tenancy agreement is to attempt to limit the number of times the landlord must incur the costs of re-renting.

I find it more likely than not that, when a tenant breaches a fixed term tenancy agreement resulting in an early end to the tenancy, the landlord incurs the costs of re-renting earlier than it would have without the breach. This exposes the landlord to extra costs of re-rental.

In this case, the liquidated damages clause is intended to compensate the landlord for losses resulting from the costs of re-renting a unit after the tenant's breach.

I find that the landlord did not show how the \$2,321.00 claimed for liquidated damages in the tenancy agreement was a genuine pre-estimate of the loss. For the above reasons, I dismiss the landlord's claim for liquidated damages without leave to reapply.

#### *Filing fee and Deposit*

As the landlord has been substantially successful in the landlord's claim, the landlord is entitled to reimbursement of the filing fee. Further to the offsetting provisions of section 72, the landlord is entitled to apply the deposit to the award.

## Summary

In conclusion, I made the following award in favour of the landlord:

ITEM	AMOUNT
Cleaning/repair costs	\$420.00
Outstanding rent November 2019	\$2,321.00
Replacement fob	\$100.00
Reimbursement of filing fee	\$100.00
(Less Deposit)	(\$2,321.00)
<b>Total Monetary Award Landlord =</b>	<b>\$620.00</b>

## Conclusion

The landlord is entitled to a monetary order in the amount of **\$620.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) to be 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 *Residential Tenancy Act*.

Dated: May 11, 2020

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Residential Tenancy Branch