



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MOSAIC DRF SEVEN LIMITED  
PARTNERSHIP and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL-S, MNRL-S, FFL

### Introduction

On April 14, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for damages, a Monetary Order for loss of rent, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me and the Tenant confirmed that he did not submit any evidence to the Residential Tenancy Branch or the Landlord.

### Issues to be Decided

Should the Landlord receive a Monetary Order for damages, in accordance with Section 67 of the Act?

Should the Landlord receive a Monetary Order for loss of rent, in accordance with Section 67 of the Act?

Should the Landlord be authorized to apply the security deposit to the claim, in accordance with Sections 38 and 72 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

### Background and Evidence

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.

Both parties agreed to the following terms of the tenancy:

The one-year, fixed-term tenancy began on August 1, 2019 and was terminated by the Tenants on February 28, 2020. The rent was \$2,475.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$1,237.50 and a pet damage deposit in the amount of \$1,237.50.

The Landlord testified that the Tenants served an Early Termination by Tenant (Fixed Term Tenancy Agreement) document, dated January 20, 2020, to the Landlord. In that document, the Tenants gave notice that they would be terminating their fixed-term tenancy on February 28, 2020. The Tenants acknowledged their responsibility to pay rent up until the last day of July 2020, if the Landlord is unable to rent the unit before then.

The Landlord referred to a submitted copy of the Move-In Condition Inspection Report where both Tenants signed the document and acknowledged that there were no issues with the rental unit. The Landlord stated that they met Tenant KH on February 27, 2020 to conduct a move-out inspection. During the inspection, the Landlord made notes of some drywall damage, light bulbs that needed replacing, and that the unit required a full cleaning. The Landlord documented the concerns and the estimated costs on the last page of the Move-out Condition Inspection Report. The Landlord provided a copy of the report and testified that the Tenant KH acknowledged the damages and agreed to the deductions from his security deposit and pet damage deposit by providing his signature at the bottom of the report.

The Landlord is claiming \$574.40 for damages to the rental unit, based on \$315.00 for drywall repair and painting; \$239.40 for cleaning the rental unit; and, \$20.00 to replace lightbulbs.

Both of the Landlord's representatives testified that once they had received the Early Termination notice from the Tenants, the Landlord immediately began advertising the rental unit on two different internet platforms. The Landlord stated that there were many two-bedroom rental units on the market at the time and when they did not find new tenants during February, they lowered the advertised rent to \$2,250.00. The Landlord was able to find new tenants for the rental unit for April 1, 2020.

The Landlord is making a claim for the following losses related to the early termination of the fixed-term tenancy:

<b>Item</b>	<b>Amount</b>
Loss of rent for March 2020	\$2,475.00
Loss as a result of reduced rent for 4 months	900.00
Parking – March 2020	75.00
Gym fees – March 2020	20.00
Move out fees (Strata related)	150.00
March 2020 NSF fees	30.00
March 2020 late fees	25.00
<b>Total</b>	<b>\$3,675.00</b>

The Landlord acknowledged that they are still holding the security deposit and the pet damage deposit in the amount of \$2,475.00. The combination of the Landlord's claim for damages (\$574.40) and the claim for losses associated to rent (\$3,675.00) add up to \$4,249.40. The Landlord would like to apply the security deposit and pet damage deposit to the total amount and therefore, is claiming compensation for a total loss of \$1,774.40.

<b>Item</b>	<b>Amount</b>
Damages to rental unit	\$574.40
Losses associated to early termination of fixed-term tenancy	3,675.00
Less security deposit and pet damage deposit	-2,475.00
<b>Landlord's outstanding claim of losses</b>	<b>\$1,774.40</b>

The Tenant testified that when he met with the Landlord on February 27, 2020 for the move-out inspection, there were five people representing the Landlord and that he felt intimidated. The Tenant acknowledged that he signed the move-out report but signed on the wrong line and stated that that should invalidate his signature.

The Tenant stated that he doesn't have any objections to having to pay for the March rent; however, said there was no damage to the drywall, other than what had been there by previous tenants, and that there was no need to paint the walls.

The Tenant testified that the cleaning had been completed over a two-day period and that the unit was "top to bottom immaculate". The Tenant disagrees that he should be charged for the cleaning fees.

The Tenant stated that he did not see any advertisements of the rental unit where the Landlord presented pictures of the very large patio. The Tenant said that if the Landlord had advertised it properly, they could have rented it out sooner and may not have had to reduce the rent.

### Analysis

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order the responsible party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage. Section 7(1) of the Act establishes that a Tenant who does not comply with the Act, the Regulations or the Tenancy Agreement must compensate the Landlord for damage or loss that results from that failure to comply.

I accept the undisputed evidence that the Tenants terminated their tenancy early and did not pay the rent that was due for March 2020; and, that the Landlord advertised the rental unit and found new tenants for April 2020 at a reduced rent. I accept the testimony of the Landlord's representatives and find that they attempted to mitigate damages by advertising the rental unit as soon as reasonable and subsequently lowered the rent when new tenants were not found in the first month. As a result, I find the Landlord has proven a loss of rent stemming from the Tenants' violation of the fixed-term in their Tenancy Agreement. I find the Landlord has established a monetary claim regarding the early termination of the lease, including the loss of March 2020 rent and the associated fees.

The Landlord testified that drywall repair and painting was required after the Tenants moved out of the rental unit. The Landlord submitted move-in and move-out reports

where the Tenants acknowledged there was no damage at the beginning of the tenancy and Tenant KH acknowledged, by his signature, that there was drywall damage at the end of the tenancy. Tenant KH stated, during the hearing, that there was no drywall damage other than damage from previous tenants and that his signature in the wrong place on the move-out report should not be interpreted as agreeing with the report. Although neither party provided photographic evidence of the (non) damage, I considered the following evidence; that both Tenants signed the move-in report indicating no damage; that the Landlord identified damage at the move-out inspection; and, that Tenant KH acknowledged there was some drywall damage and also signed the report that documented the damage. As a result, based on a balance of probabilities, I find there was damage to the drywall and that the Landlord has established a monetary claim for the repair to the drywall.

Both parties provided conflicting testimony regarding the cleanliness of the rental unit at the end of the tenancy and neither parties provided pictures or other supporting evidence. I find that the Landlord failed to provide sufficient evidence to prove that cleaning was required and as such, dismiss this part of the Landlord's claim.

I issue a Monetary Order in the Landlord's favour under the following terms, which allows the Landlord to recover losses related to the early termination of the tenancy, damages to the rental unit, compensation for the filing fee for this Application, and to retain the Tenants' security deposit:

<b>Item</b>	<b>Amount</b>
Losses associated to early termination of fixed-term tenancy	3,675.00
Drywall repair and painting	315.00
Replace lightbulbs	20.00
Recovery of Filing Fee for this Application	100.00
Less security deposit and pet damage deposit	-2,475.00
<b>Total Monetary Order</b>	<b>\$1,635.00</b>

Conclusion

The Landlord has established a monetary claim, in the amount of \$4,110.00, which includes \$3,675.00 related to losses associated to the early termination of the fixed-term tenancy, \$335.00 related to damages in the rental 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 keep the Tenants' security deposit and pet damage deposit in the amount of \$2,475.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a Monetary Order for the balance of \$1,635.00 in accordance with Section 67 of the Act. In the event that the Tenant does not 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 *Residential Tenancy Act*.

Dated: August 19, 2020

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Residential Tenancy Branch