



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on April 15, 2020 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation;
- an order to retain the Tenants' security and pet damage deposits; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on August 24, 2020 as a teleconference hearing. Only the Landlord attended the hearing at the appointed date and time and provided affirmed testimony. No one appeared for the Tenants. The conference call line remained open and was monitored for 10 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 and I were the only persons who had called into this teleconference.

The Landlord testified the Application and documentary evidence package was served to the Tenants via email which was an approved form of service during the Covid-19 state of emergency. Based on the oral and written submissions of the Applicant, and in accordance with section 71 of the *Act*, I find that Tenants were sufficiently served the above mentioned documents.

The Landlord was 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.

### Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for compensation, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to retaining the Tenants' security and pet damage deposits, pursuant to Section 38 and 72 of the *Act*?

3. Is the Landlord entitled to an order granting the 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 to end on May 1, 2021. The Tenants paid rent in the amount of \$1,900.00 to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$950.00 as well as a pet damage deposit in the amount of \$1,200.00. The Landlord stated that he currently holds \$2,150.00 in deposits from the Tenants. The Landlord stated that the Tenants moved out of the rental unit on April 1, 2020. The Landlord provided a copy of the tenancy agreement in support.

The Landlord stated that the Tenant provided their notice to end tenancy to the Landlord, ending their fixed term tenancy early on April 1, 2020. The Landlord stated that he posted the rental unit online and conducted several showing in an attempt to re-rent the rental unit. The Landlord stated that he did not receive any suitable applications despite the fact that he lowered the rent by \$150.00 each month, in an attempt to attract more applicants.

The Landlord stated that the Tenants moved out of the rental unit on April 1, 2020, and that he secured a new occupant to move into the rental unit on April 25, 2020. The Landlord stated that the new occupant paid a pro rated amount of rent for the month of April 2020 in the amount of \$300.00. The Landlord stated that he is seeking to recover the remaining balance of lost rent in the amount of \$1,600.00 from the Tenants.

Furthermore, the Landlord is seeking to recover the loss of rental income in the amount of \$150.00 for each month until what would have been the end of the fixed term agreement, totalling \$1,650.00 (\$150.00 x 11 months). If successful, the Landlord is also seeking the return of the filing fee.

### Analysis

Based on the affirmed 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*. Pursuant to Residential Tenancy Policy Guideline #16 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 Tenant. 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.

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.*

In this case, I accept that the parties entered into a fixed term tenancy up until May 1, 2021. I accept that the Tenants broke the fixed term tenancy by moving out early on April 1, 2020. I find that the Tenants were not entitled to breaking the fixed term tenancy early, and are in breach of Section 45 of the *Act*. I accept that the Landlord immediately placed an advertisement and conducted several showings in an attempt to re rent the unit, however, was unable to find a new suitable occupant until April 25, 2020. I accept that the Landlord was able to recover \$300.00 towards April 2020 rent.

I find that the Tenants were not entitled to end the fixed term tenancy early, which resulted in the Landlord incurring a loss of rental income in the amount of \$1,600.00. I find that the Landlord has established an entitlement to monetary compensation in the amount of \$1,600.00 from the Tenants.

The Landlord stated that he decided to lower the rent from \$1,900.00 to \$1,750.00 to attract more applicants to re-rent the rental unit. The Landlord is seeking to recover the loss of rental income in the amount of \$150.00 for each month until what would have been the end of the fixed term agreement, totalling \$1,650.00 (\$150.00 x 11 months). In this case, I find that the Landlord chose to lower the monthly rent by \$150.00, therefore, did not mitigate his loss. I find that the Tenants should not be responsible for

compensating the Landlord for this loss of rental income. As such, I dismiss this portion of the Landlord's claim without leave to reapply.

Having been partially successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary award in the amount of \$1,700.00. During the hearing, the Landlord confirmed he currently holds \$2,150.00 in deposits from the Tenants. As such, I find that the Tenants are entitled to a monetary order in the amount of \$450.00 which represents the remaining portion of their deposits, less the amount awarded to the Landlord ( $\$2,150.00 - \$1,700.00 = \$450.00$ ).

### Conclusion

The Tenants breached the Act by ending their fixed term tenancy early. As such, the Landlord is granted a monetary award in the amount of \$1,700.00. The Tenants are awarded a monetary order in the amount of \$450.00 which represents the remaining portion of their deposits, less the amount awarded to the Landlord. The order should be served to the Landlord as soon as possible and may be filed in and enforced as an order of the Provincial Court of BC (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: August 24, 2020

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Residential Tenancy Branch