



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL, FFL

### Introduction

On August 5, 2020, the Landlords submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for unpaid rent, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlords 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.

### Issues to be Decided

Should the Landlords receive a Monetary Order for unpaid rent, in accordance with section 67 of the Act?

If successful, should the Landlords be authorized to apply the security deposit to the claim, in accordance with sections 38 and 72 of the Act?

Should the Landlords 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 October 1, 2019. The rent was \$2,100.00 and due on the first of each month. The Landlords collected and still hold a security deposit in the amount of \$1,050.00.

Landlords' claim for unpaid rent:

The Landlords testified that they listed their residential property for sale in July 2020 and were making arrangements with the Tenant for showings.

The Landlords received \$500.00 from the BC Government as a supplement for the Tenants' August 2020 rent. The Tenant failed to pay the balance of \$1,600.00.

The Landlords stated that the Tenant sent a message on a social media messaging application (WhatsApp) on August 2, 2020 stating that the Tenant was going to move out of the rental unit on August 15, 2020.

The Landlords submitted a letter, dated August 4, 2020, that was sent to the Tenant and reminded her that the end of the fixed term is September 30, 2020 and that her notice to end the tenancy was not valid.

The Tenant sent a WhatsApp message, dated August 4, 2020, advising that she would be moving out of the rental unit at the end of August 2020, that this was her one months' notice, and that the Landlords could keep the security deposit.

As the Tenant was not happy with the showing of the rental unit and not cooperative with the realtor, the Landlords presented, on August 6, 2020, a mutual agreement to end the tenancy to the Tenant for August 15, 2020. The Tenant did not respond or sign the agreement. The Landlords subsequently removed the for-sale listing of the rental unit and expected the Tenant to pay her rent until the end of the fixed-term.

The Landlord testified that the Tenant moved out of the rental unit on August 30, 2020. The Tenant did not pay the rent for September 2020, pursuant to the fixed term in the Tenancy Agreement.

The Landlords stated that they did not attempt to find new tenants for the rental unit as they immediately placed the unit for sale upon the Tenant vacating. The Landlords stated the rental unit sold as of early October 2020.

The Landlords are making a monetary claim for loss of rent for the month of August 2020 in the amount of \$1,600.00 and the month of September 2020 in the amount of \$2,100.00.

The Tenants response:

The Tenant submitted a document and copies of WhatsApp messages between her and the Landlords, as evidence.

The Tenant testified that she received a message from the Landlords to advise that they were going to be selling the rental unit and that if it sold, that she would have to vacate the unit on October 1, 2020. The realtor started showing the rental unit as of July 15, 2020.

The Tenant messaged the Landlords on August 2, 2020 and advised that she might be vacating the property on August 15, 2020. The Tenant acknowledged that the Landlords advised her that she would be breaching the Tenancy Agreement and needed to provide 30 days notice.

The Tenant acknowledged that she did not respond to the mutual agreement to end tenancy as she had told the Landlords, via WhatsApp, that she would be moving out at the end of August 2020.

The Tenant stated that she still owed the Landlords money for the August 2020 rent, but should not have to pay for September 2020 as the Landlords agreed to end the tenancy at the end of August.

### Analysis

Section 45(2) of the Act states that a Tenant may end a fixed term tenancy by giving the Landlord a notice to end tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and, is the day before the day in the month that rent is payable under the Tenancy Agreement.

In this case, according to the Tenancy Agreement, the Tenant was not able to end the tenancy prior to September 30, 2020. If the Tenant wanted to end the tenancy at the end of the fixed term, she would have had to ensure that the Landlords received the written notice to end the tenancy by August 31, 2020. At the end of the fixed term, the tenancy would have continued as a month-to-month tenancy regardless of the sale of the rental unit (see section 49(5) of the Act for further details regarding the sale of a rental unit).

I accept that the Landlords presented the Tenant with an opportunity to sign a mutual agreement to end a tenancy; however, I find that no agreement was signed between the parties.

Section 26 of the Act explains that the tenant must pay rent when it is due under the Tenancy Agreement, whether or not the landlord complies with this Act, the Regulations or the Tenancy Agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. As I do not have any evidence before me that the Tenant had a right under this Act to deduct any of their rent, I find that the Tenant is in breach of Section 26 of the Act.

Before awarding a monetary claim for unpaid rent to the Landlords, I have to consider Section 7(2) of the Act that states a landlord or tenant 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.

I accept that the Landlords were attempting to sell the rental unit during the tenancy; that they removed the listing as it was difficult to conduct showings while the tenancy was continuing; and, that they relisted the unit as soon as the tenancy ended. I find that the Landlords showed diligence in mitigating their losses and that it was not reasonable to attempt to find new tenants for the rental unit that was expected to sell.

As such, I find the Landlords have established a monetary claim, in the amount of \$3,800.00, which includes \$3,700.00 in unpaid rent 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 Landlords to keep the Tenant's security deposit in the amount of \$1,050.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a Monetary Order for the balance of \$2,750.00 in accordance with Section 67 of the Act.

### Conclusion

Pursuant to Section 67 of the Act, I grant the Landlord a Monetary Order for \$2,750.00. 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: November 25, 2020

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Residential Tenancy Branch