



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Tenant: MNRT, MNSD, MNDCT  
Landlord: MNDL-S, MNDCL-S, MNRL-S, FFL

### **Introduction**

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenant’s Application for Dispute Resolution was made on April 10, 2020, (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- a monetary order for the cost of emergency repairs;
- a monetary order for damage or compensation; and
- an order granting the return of all or part of the security deposit.

The Landlord’s Application for Dispute Resolution was made on April 24, 2020, (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss;
- a monetary order for unpaid rent;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

### **Preliminary Matters**

The original hearing took place on August 17, 2020, however, despite the hearing lasting one and a half hours we did not complete within the scheduled time. Pursuant to Rules 7.8 and 7.9, the hearing was adjourned and reconvened on October 5, 2020 during which the parties participated in a further two and a half hours of hearing time.

The Tenant, the Landlord, and the Landlord's Counsel A.E. attended both hearings at the appointed date and time.

At the beginning of the first hearing, the parties acknowledged receipt of their respective application packages and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

#### Issue(s) to be Decided

1. Is the Tenant entitled to a monetary order for the cost of emergency repairs, pursuant to Section 33 of the *Act*?
2. Is the Tenant entitled to an order granting the return of the security deposit, pursuant to Section 38 of the *Act*?
3. Is the Tenant entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?
4. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
5. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss pursuant to Section 67 of the *Act*?
6. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?
7. Is the Landlord entitled to retain the Tenant's security deposit pursuant to Section 38 of the *Act*?

#### Background and Evidence

The parties testified that the fixed term tenancy began on December 15, 2019 and was meant to end on January 31, 2021. The parties agreed that the tenancy ended early on April 15, 2020. During the tenancy, the Tenant was required to pay rent in the amount of \$6,100.00 per month. The Tenant paid a security deposit of \$3,050.00 which the Landlord continues to hold.

#### Tenants' Claim

The Tenant created her own monetary worksheet in preparation for the hearings. The Tenant is claiming \$9,301.40 which is broken down in detail below;

The Tenant is claiming \$154.50 to repair a broken dryer door during the tenancy. The Tenant stated that she was without the use of the dryer for the first 6 weeks of her tenancy until the repairs could be made. The Tenant provided receipts in support of the repair costs. The Landlord's Counsel stated that the Tenant was meant to be reimbursed by the vendor and that the Landlord paid for the repair costs and provided a receipt for the same repairs in support.

The Tenant is claiming \$156.00 and \$105.00 in relation to two pest control inspections which took place at the rental unit. The Tenant stated that she noticed evidence of a rodent problem in the rental unit at the start of the tenancy and that there was a foul smell emitting from the basement. The Tenant stated that this caused her health issues to worsen. The Tenant provided a Doctors note in support. The Tenant stated that she began notifying the Landlord on December 25, 2019, March 19, 2020 and again on April 2, 2020 about the rodent problem, however, the Landlord did not take sufficient action to assist in remedying the situation.

The Tenant stated that the Landlord notified the Tenant that it would be her responsibility to take care of the issue. The Tenant stated that she attempted to take care of the rodent problem on her own and spent \$180.00 on pest control products in an attempt to mitigate the negative impact the issue was having on the Tenant.

The Landlord Counsel stated that there had not been any rodent issues prior to the commencement of the tenancy, and that the Tenant is required to maintain sanitary standards in the rental unit, which was not being done. The Landlord's Counsel stated that the Landlord was made aware of the rodent issue for the first time on April 2, 2020 and made arrangements with a pest control company on April 3, 2020, before they attended the rental property on April 8, 2020. The Landlord's Counsel stated that the Tenant was not home to allow for entry. The Landlord provided an email exchange between the parties in support.

The Tenant stated that the rental unit required significant cleaning to disinfect the areas and clean up feces as a result of the rodent issue. The Tenant is claiming for three months of cleaning at cost of \$1,500.00 which was paid by the Tenant. The Tenant stated that she also paid a cleaning company \$1,300.00 for further cleaning. The Tenant provided a receipt in the amount of \$3,200.00 as well as one in the amount of \$1,600.00 in support.

The Landlord's Counsel stated that the cleaning bill provided by the Tenant is from an unregistered company and has an incorrect date of February 20, 2002 and April 1, 2002

and on each of the receipts. The Landlord's Counsel questioned the authenticity of the receipts.

The Tenant stated that she felt as though the Landlord did not take the rodent issue seriously, therefore, decided to end the tenancy as a result. The Landlord's Counsel confirmed that the Landlord received an email from the Tenant on April 10, 2020 which indicated that the Tenant wished to end the tenancy on April 15, 2020 citing that the Landlord had breached a material term of the tenancy agreement.

The Tenant is claiming \$2,500.00 in relation to moving costs associate with vacating the rental unit as a result of the rodent problem. During the hearing, the Tenant stated that this was only an estimate and that she did not provide a receipt. The Tenant provided witness statements and also made several witnesses available during the hearings to attest to the Tenant's experience while residing in the rental unit.

The Tenant is claiming \$356.20 for electrical repairs that were required to be completed during the tenancy. The Tenant stated that the electrical panel in the rental unit was insufficient and outdated. The Tenant stated that the Landlord was unwilling to replace the electrical panel, which resulted in the Tenant experiencing a loss of power on several occasions. The Tenant stated that the Landlord had provided her with a list of approved trades persons at the start of the tenancy, therefore, she called an electrician to repair the issue.

The Landlord's Counsel stated the electrical panel was sufficient and that it was the Tenant who was causing the breakers to trip as a result of plugging in too many devices. The Landlord's Counsel stated that the Tenant did not provide the Landlord with an opportunity to make arrangements for repair prior to the Tenant hiring an electrician to conduct repairs. Lastly, the Tenant is claiming for the return of her security deposit.

#### Landlord's Claim

The Landlord's Counsel submits that prior to the tenancy, the Landlord had the rental unit repainted, the locks changed, and the carpets washed. The Landlord provided a monetary worksheet in preparation for the hearings. The Landlord is claiming \$32,290.59 which is broken down in detail below;

The Landlord is claiming \$159.66 in relation to replacing locks in the rental unit at the end of the tenancy. The Landlord provided a receipt in support. The Landlord's Counsel

stated that the Tenant failed to return the key to the rental unit at the end of the tenancy. The Tenant stated that she left the key on the counter at the end of the tenancy, which was also indicated in an email to the Landlord. The Tenant stated that when the parties met on April 17, 2020 to do a move out inspection, the Landlord had already gained entry to the rental unit prior to the Tenant's arrival. As such, the Tenant stated that the Landlord retrieved the key in order to open the door.

The Landlord is claiming \$84.00 in relation to replacing a broken toilet and \$126.00 for the installation of the new toilet. The Tenant stated that there were no issues with the toilet during the tenancy. The Landlord provided receipt in support of these costs.

The Landlord is claiming \$957.03 for the replacement of a dryer in the rental unit. The Landlord's Counsel stated that the dryer was damaged during the tenancy and required replacement. The Tenant stated that the Landlord tried the dryer during the move out inspection and that it worked just fine. The Landlord provided a receipt and pictures in support.

The Landlord is claiming \$2,000.00 to repair various damage in the rental unit and is also claiming \$1,000.00 for cleaning the rental unit at the end of the tenancy. The Landlord provided pictures demonstrating damage and dirty conditions. The Tenant also provided pictures of the rental unit at the end of the tenancy showing a clean and damage free rental unit in support.

The Landlord is claiming \$125.00 for a pest control inspection which took place at the end of the tenancy. The Landlord's Counsel stated that the inspection revealed that there was no rodent activity of any kind found in any area of the rental property as of April 30, 2020. The Landlord provided a copy of the pest control inspection report in support.

The Landlord is claiming \$13,647.90 in relation to painting the house at the end of the tenancy. The Landlord's counsel stated that the Landlord had the house painted prior to the commencement of the tenancy. The Landlord provided a receipt in support. The Tenant stated that only portions of the home were repainted at the start of the tenancy, however, the rest had not been repainted. As such, the Tenant stated that she does not feel as though she should be responsible for having the entire rental property painted

after only having been residing in the rental unit for 4 months. The Landlord provided a receipt in support of painting the entire house at the end of the tenancy.

The parties agreed that they came together on April 17, 2020 to conduct a move out inspection of the rental unit. The Tenant stated that everything worked in the rental unit and that there was no damage noted. The Tenant stated that the Landlord did not bring the condition inspection report to make the required notes and signatures in agreement of the overall condition of the rental unit. The Tenant denies causing any damage. The Landlord's Counsel stated that the Tenant had refused to sign the condition inspection report provided during the move out inspection.

The Landlord is claiming is claiming \$1,491.00 in relation to garden cleaning. The Landlord's Counsel stated that the parties had agreed in the tenancy agreement that the Tenant would be responsible for maintaining the rental property, including the gardens. The Landlord provided a quote in support of the costs associated with conducting a "spring clean-up" of the garden beds.

The Landlord is claiming \$12,200.00 for loss of rent for two months. The Landlord's Counsel stated that as a result of the Tenant ending the fixed term agreement early on April 15, 2020, the Landlord was unable to re-rent the rental unit until June 15, 2020. The Landlord's counsel stated that it took one and a half months to repair the damage caused by the Tenant. The Tenant stated that she offered to sublet the rental unit, however, the Landlord declined the offer. The Landlord provided no evidence in support of their effort to re-rent the rental unit but stated that they had advertised the rental unit for rent.

The Tenant's witness D.C. stated that he was an occupant in the rental unit during the tenancy and that he made an effort to discuss the option of continuing the tenancy with the Landlord prior to the end of the tenancy, however, the Landlord declined.

The Landlord is claiming liquidated damages in the amount of \$500.00. The Landlord's counsel stated that the parties agreed to the liquidated damages clause in the tenancy agreement at the start of the tenancy. The Landlord's Counsel stated that the \$500.00

being claimed is a genuine pre estimate of the cost associated with re-renting the rental unit.

If successful, the Landlord is seeking to retain the Tenant's security deposit as well as for the return of the filing fee paid to make the Application.

### Analysis

Based on all of the above, the evidence and testimony, 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*. 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 Applicant 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 Respondent. Once that has been established, the Applicant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Applicant did what was reasonable to minimize the damage or losses that were incurred.

### The Tenant's Claim

The Tenant is claiming \$154.50 to repair a broken dryer door during the tenancy. The Landlord's Counsel stated that the Tenant was meant to be reimbursed by the vendor and that the Landlord paid for the repair costs and provided a receipt for the repairs in support. I find that the Tenant provided insufficient evidence to demonstrate that they suffered a loss as a result of the replacement costs associated with repairing the dryer. I accept that the Landlord provided a receipt for the same repair. As such, I dismiss the Tenant's claim without leave to reapply.

The Tenant is claiming \$156.00 and \$105.00 in relation to two pest control inspections which took place at the rental unit. Furthermore, the Tenant is claiming \$180.00 for the cost of pest control products. In this case, I find that the Tenant provided sufficient evidence to demonstrate that the rental unit had, at one point, a rodent problem.

According to Section 32(1)(a) A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law.

I find that it would be the Landlords responsibility to address the rodent issue experienced by the Tenant during the tenancy. As such, I find that the Tenant is entitled to compensation for the pest control inspections and products in the amount of **\$441.00**.

The Tenant stated that the rental unit required significant cleaning to disinfect the areas and clean up feces as a result of the rodent issue at a cost of \$1,500.00 which was paid by the Tenant. The Tenant stated that she also paid a cleaning company \$1,300.00 for further cleaning. The Tenant provided a receipt in the amount of \$3,200.00 as well as one in the amount of \$1,600.00. The Landlord Counsel stated that the cleaning bills provided by the Tenant are from an unregistered company that has an incorrect date of February 20, 2002 and April 1, 2002 and on each of the receipts. The Landlord's Counsel questioned the authenticity of the receipts.

In this case, I find that the amount claimed by the Tenant on the monetary worksheet is different than the amounts shown on the receipts being claimed for. Furthermore, I accept the Landlord's Counsel observation of the authenticity of the receipts as they are both apparently from different sources but are both dated 2002 on the receipts. For these reasons, I dismiss the Tenant's claims for cleaning the rental unit without leave to reapply.



The Tenant is claiming \$2,500.00 in relation to moving costs associated with vacating the rental unit as a result of the rodent problem. During the hearing, the Tenant stated that this was only an estimate and that she did not provide a receipt. I accept that the Tenant chose to end the fixed term tenancy early on April 15, 2020 after providing the Landlord with her notice on April 10, 2020 as a result of the Landlord breaching a material term of the tenancy agreement.

According to Section 45(3) of the Act; if a Landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

The Residential Tenancy Policy Guidelines (the “Police Guidelines”) offers some clarity around what constitutes a material term. According to Policy Guideline 8; a material term is a term that the parties both agree at the start of the tenancy, is so important that the most trivial breach of that term gives the other party the right to end the agreement.

Furthermore, Policy Guideline 8 indicates that in order to end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- (a) that there is a problem;*
- (b) that they believe the problem is a breach of a material term of the tenancy agreement;*
- (c) that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- (d) that if the problem is not fixed by the deadline, the party will end the tenancy.*

Although the Tenant felt that the Landlord’s lack of attention towards a rodent issue at the rental unit was a breach of a material term of the tenancy agreement, I find that the Tenant provided insufficient evidence to demonstrate that the Tenant notified the Landlord in writing that there was a problem, that the problem is a breach of a material term, gave a deadline for fixing it and advised them that if it was not fixed by the deadline, they would end the tenancy.

I find that the Tenant had other remedies available to them at the time such as making an application for an order requiring the Landlords to make repairs pursuant to Section 32 of the Act. I find that the Tenant violated the Act by ending their fixed term tenancy early without cause.

As such, I find that the Tenant is not entitled to monetary compensation in relation to moving costs and dismiss this claim without leave to reapply.

The Tenant is claiming \$356.20 for electrical repairs that were required to be completed during the tenancy. I find that the repairs paid for by the Tenant would have been the Landlord's responsibility complete. While the Tenant should have discussed these repairs with the Landlord prior to hiring an electrician, I find that the Landlord had provided the Tenant with a list of approved trades persons at the start of the tenancy, therefore, I find that it is reasonable for the Tenant to have assumed that it would have been their responsibility to phone someone for repairs such as these. I find that the Tenant is entitled to compensation in the amount of **\$356.20**.

#### Landlord's Claim

The Landlord is claiming \$159.66 in relation to replacing locks in the rental unit as the Tenant failed to return the key to the rental unit at the end of the tenancy. The Tenant stated that she left the key on the counter at the end of the tenancy, which was also indicated in an email to the Landlord. The Tenant stated that when the parties met on April 17, 2020 to do a move out inspection, the Landlord had already gained entry to the rental unit prior to the Tenant's arrival. As such, the Tenant stated that the Landlord retrieved the key in order to open the door.

In this case, I find that the Landlord provided insufficient evidence to demonstrate that the Tenant failed to return the key at the end of the tenancy or that the Landlord does not have access to the rental unit as a result, which required the lock to be replaced. As such, I dismiss this claim without leave to reapply.

The Landlord is claiming \$84.00 in relation to replacing a broken toilet and \$126.00 for the installation of the new toilet. The Tenant stated that there were no issues with the toilet during the tenancy. In this case, I find that the Landlord provided insufficient evidence to demonstrate that the toilet needed to be replaced at the end of the tenancy as a result of the Tenant breaking the toilet. As such, I dismiss the claim for a new toilet without leave to reapply.

The Landlord is claiming \$957.03 for the replacement of a dryer in the rental unit. The Landlord's Counsel stated that the dryer was damaged during the tenancy and required replacement. The Tenant stated that the Landlord tried the dryer during the move out inspection and that it worked just fine. In this case, I find that there had been damage to

the laundry appliances at the start of the tenancy, which resulted in repairs being made prior to the end of the tenancy. I find that the Landlord provided insufficient evidence to demonstrate that the Tenant caused damage to the dryer to the extent that the Landlord was required to replace the unit with a brand-new dryer. As such, I dismiss this claim without leave to reapply.

The Landlord is claiming \$2,000.00 to repair various damage in the rental unit and is also claiming \$1,000.00 for cleaning the rental unit at the end of the tenancy. The Landlord provided pictures in support. The Tenant also provided pictures of the rental unit at the end of the tenancy in support.

In this case, I find that the Landlord provided an extensive list of repairs which were included in the \$2,000.00 claim for repairs. I find that the Landlord provided insufficient evidence to support each one of the claims listed. I accept that the Landlord provided some pictures of damage in the rental unit, however, the Landlord did not provide a monetary breakdown for each item, rather one lump sum associated with repairing all the items on the list. As such, I find that I am unable to aware any specific amount for repairs and therefore dismiss the Landlord's claims for repairs without leave to reapply.

In relation to the Landlord's claim for \$1,000.00 for cleaning, I find that the receipt provided by the Landlord related to window washing and pressure washing. I find that the Landlord provided insufficient evidence to demonstrate that during the 4 month tenancy, the Tenant made a mess to any specific area of the rental property or windows that would required extensive cleaning such as pressure washing or window cleaning. As such, I dismiss the Landlord's claim without leave to reapply.

The Landlord is claiming \$125.00 for a pest control inspection which took place at the end of the tenancy. The Landlord's Counsel stated that the inspection revealed that there was no rodent activity of any kind found in any area of the rental property as of April 30, 2020. I accept that the Tenant performed their own pest control treatment during the tenancy which may have rid the rodent problem at the rental property. Furthermore, I find that it is the Landlord's responsibility to do so in accordance with Section 32 of the *Act*. As such, I dismiss this claim without leave to reapply.

The Landlord is claiming \$13,647.90 in relation to painting the house at the end of the tenancy. The Landlord's counsel stated that the Landlord had the house painted prior to the commencement of the tenancy. The Landlord provided a receipt in support of

painting the entire house at the end of the tenancy. In this case, I find that the receipt provided by the Landlord for painting states;

*“Special notes: To have a fresh look to the rental house. Painting to: Entire house: All the walls, doors, frames, closets. Ceiling's in the living room and basement stairwell only”*

In this case, I find that the Landlord provided insufficient evidence to demonstrate that the Tenant, during the 4 month tenancy, caused such significant damage to the rental unit that it required to be completely repainted at the end of the tenancy. Furthermore, I find that the receipt does not refer to any damage in the rental, only to “have a fresh look”. As such, I dismiss this claim without leave to reapply.

The Landlord is claiming is claiming \$1,491.00 in relation to garden cleaning. The Landlord's Counsel stated that the parties had agreed in the tenancy agreement that the Tenant would be responsible for maintaining the rental property, including the gardens. The Landlord provided a quote in support of the costs associated with conducting a “spring clean-up” of the garden beds.

In this case, I accept that the tenancy started on December 15, 2019 and ended on April 15, 2020. I find that the Landlord provided insufficient evidence to demonstrate that the garden beds required any maintenance during this time. Furthermore, if any work was required, the Landlord provided insufficient evidence to demonstrate the conditions of the garden beds prior to the start of the tenancy as opposed to the end of the tenancy. As such, I dismiss this claim without leave to reapply.

The Landlord is claiming \$12,200.00 as a result of the Tenant ending the fixed term agreement early on April 15, 2020, the Landlord was unable to re-rent the rental unit until June 15, 2020. The Landlord's counsel stated that it took one and a half months to repair the damage caused by the Tenant.

While I have previously found that the Tenant breached the Act by ending the fixed term tenancy early, I find that the Landlord has failed to provide sufficient evidence to demonstrate that they mitigated their loss by making efforts to re-rent the rental unit. While the Landlord's Counsel stated that the it took one and a half months to repair the rental unit, I find that the Landlord provided insufficient evidence to demonstrate that the damage was caused by the Tenant. Furthermore, I accept that one of the Tenant

offered to sublet the rental unit and the Tenant's occupants expressed an interest in continuing the tenancy, but these offers were denied by the Landlord.

In this case, I find that the Landlord has demonstrated an entitlement to some monetary compensation for loss of rent, therefore, I award the Landlord compensation equivalent to one month of rent in the amount of **\$6,100.00**.

The Landlord is claiming liquidated damages in the amount of \$500.00. The Landlord's counsel stated that the parties agreed to the liquidated damages clause in the tenancy agreement at the start of the tenancy.

According to the Residential Policy Guideline #4; 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. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

I accept that the parties agreed to the liquidated damages clause contained in the tenancy agreement. I find that the amount of \$500.00 is a reasonable pre-estimate of the loss associated with re-renting the rental unit. As I have found that the Tenant breached the Act by ending the fixed term tenancy early, I find that the Landlord is entitled to an award of **\$500.00** for liquidated damages.

As the Landlord was partially successful with their Application, I find that the Landlord is entitled to the **\$100.00** filing fee paid to make the Application.

#### Set off of Claims

I find that the Tenant is entitled to monetary compensation in the amount of \$797.20 for pest control inspections and products, and electrical repairs.

I find that the Landlord is entitled to monetary compensation in the amount of \$6,700.00 in relation to loss of rent, liquidated damages, and for the return of the filing fee. Further, I find it appropriate in the circumstances to order that the Landlord retain the security deposit held in partial satisfaction of the claim (\$6,700.00 – \$3,050.00 = \$3,650.00)

Setting of the parties' claims, and pursuant to section 67 of the *Act*, I grant the Landlord with a monetary order in the amount of **\$2,852.80** (\$3,650.00 - \$797.20).

### Conclusion

Pursuant to section 67 of the Act, the Landlord is granted a monetary order in the amount of **\$2,852.80**. The monetary order must be served to the Tenant and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

Although this decision has been rendered more than 30 days after the conclusion of the proceedings contrary to section 77(1)(d) of the Act, I note that section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d).

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 13, 2020

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Residential Tenancy Branch