



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, FFL, / MNDCT, MNSD, FFT

### Introduction

On September 2, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) to request a Monetary Order for unpaid rent, and to be compensated for the filing fee.

On September 25, 2020, the Tenants submitted an Application for Dispute Resolution under the Act to request a Monetary Order for the return of the security deposit, to request a Monetary Order for compensation and to be compensated for the cost of the filing fee. The Tenants’ Application was crossed with the Landlord’s Application and the matter was set for a participatory hearing via conference call.

The Landlord, the Tenants and the Tenants’ advocate 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.

### Preliminary Matters

This hearing began at 1:30 p.m. As the hearing neared the 90-minute mark, I advised both parties that if they would like to present further testimony and evidence regarding their claims that they could do so, and we would adjourn the hearing to a future date. Both parties agreed that they would like to finish presenting their evidence over the next few minutes and preferred not to adjourn the hearing. The hearing continued and was ended at 3:12 p.m.

### Issues to be Decided

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

Should the Landlord be authorized to apply the security deposit to the monetary claims, in accordance with section 72 of the Act?

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

Should the Tenants receive a Monetary Order for the return of the security deposit, in accordance with section 38 and 67 of the Act?

Should the Tenants receive a Monetary Order for compensation, in accordance with section 67 of the Act?

Should the Tenants 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 presented to me during this hearing and 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 December 1, 2019. The rent was \$1,600.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$800.00.

The Tenants submitted an affidavit from Tenant SA that documented their concerns with the behaviour of the Landlord and how a breach of their quiet enjoyment began to occur as of July 31, 2020.

The affidavit included the Tenants' observations of the Landlord making "inappropriate and derogatory comment(s)", complaining about the noise from the Tenants' children, and that the Landlord was "watching" the rental unit almost every night.

The Tenants submitted a letter and testified that they sent it to the Landlord on August 4, 2020. This letter addressed the Tenants' concerns about the Landlord's comments regarding smells in the Tenants' rental unit, noise levels, utilities, and encouraged written communications between the parties.

The Tenants testified that on or about August 10, 2020, the Landlord installed a surveillance camera on the Landlord's carriage house that pointed towards the Tenants'

front door of the rental unit (separate residence/building). The Tenants stated that the camera was situated in such a way that it would record the inside of the rental unit through the front door window, in addition to recording the Tenants each time they left or arrived at the unit.

The Tenants stated that they sent a letter on August 13, 2020 to the Landlord advising that the Tenants did not consent to the recording of their family and demanded that the Landlord remedy this breach by August 16, 2020, by removing the camera or pointing it away from the rental unit.

The Tenants stated that the Landlord did not remove the camera, therefore, they wrote another letter on August 19, 2020 to advise the Landlord that she was breaching the Tenants' rights to quiet enjoyment. The Tenants warned the Landlord that if she did not remove the camera by August 22, 2020, they would terminate the tenancy on August 31, 2020.

The Tenants submitted the Landlord's response that was sent via email on the evening of August 19, 2020. The Tenant summed up the Landlord's email as saying that the camera was installed because the Tenants had complained about other tenants.

The Tenants testified that as a result of the Landlord's persistent harassment and refusal to rectify the material breach of the Tenants' right to reasonable privacy, the Tenants did not feel comfortable living in the rental unit. The Tenants stated that since August 18, 2020, they have been staying in hotels and campsites with their children to avoid the "very toxic environment" created by the Landlord.

The Tenants submitted a monetary order worksheet and receipts for their accommodations from August 18, 2020 to November 1, 2020. These receipts include their stays in various campsites and resorts in the Okanagan and on Vancouver Island.

The Tenants are also claiming losses for 2 days of wages during the time they had to move out of the rental unit; the rent for August as they were unable to have quiet enjoyment of the rental unit; storage costs for their furniture while they looked for new accommodations; and, double the security deposit.

The Tenants have made the following monetary claim:

Item	Amount
Accommodations	\$2,045.38

Lost wages	1,231.16
August rent	1,600.00
Double the Security Deposit	1,600.00
Storage unit rental	232.05
<b>Tenants' Total Claim</b>	<b>\$6708.59</b>

The Tenants stated that they met the Landlord on September 2, 2020 to conduct a move-out inspection of the rental unit.

The Landlord submitted a letter, dated August 13, 2020, from the Tenants that advised that they would be vacating the rental unit "due to unforeseen circumstances" on September 30, 2020. The Landlord stated that she communicated with the Tenants that she would attempt to find new tenants; however, that the Tenants would still be required to fulfill their tenancy agreement. The Landlord said that she referred the Tenants to the Residential Tenancy Branch and how to end a lease with a fixed term.

The Landlord stated that she received the letter from the Tenants on August 19, 2020 and had not received any earlier correspondence. The Landlord responded in an email on the same day and explained that the video camera is pointed at the entire building (multiple units), is motion activated, and does not see into the rental units. The Landlord stated that the video is automatically deleted every 24 hours and has been set up after consultation with her lawyer, law enforcement and the Residential Tenancy Branch. The Landlord reminded the Tenants that she will be showing the rental unit on August 24, 2020.

The Landlord stated the Tenants moved their belongings from the rental unit by the end of August and attended a move-out inspection on September 2, 2020. The Landlord submitted that she was clear with the Tenants that, although she was conducting a move-out inspection, she did not accept that the tenancy had ended just because the Tenants were vacating the rental unit.

The Landlord testified that the Tenants did not pay rent for September 2020 and that the Landlord incurred a loss for the advertisement of the rental unit in August and September 2020. The Landlord is claiming a loss of \$1,600.00 in unpaid rent and submitted receipts for advertising in the amount of \$225.28.

In response to the Tenants' claim of the Landlord's breach of a material term, the Landlord testified that the video camera does not record movement directly in front of the rental unit, that the video camera is only covering common areas, and the camera has a range of 50 feet and the rental unit is 74 feet away from the camera. The Landlord submitted still frames of the coverage as evidence.

The Landlord submitted that the Tenants broke the terms of their lease and vacated the rental unit early. The Landlord does not agree that she should be responsible for the Tenants' accommodations in August 2020, or any of their accommodations throughout the months of September and October 2020.

### Analysis

In this case, the Tenants have submitted that they are entitled to quiet enjoyment of their rental unit and that the Landlord breached the Tenants' material term of reasonable privacy, pursuant to section 28 of the Act. The Tenants provided written notice to the Landlord to remove or reposition the surveillance camera or the Tenants would end their tenancy on August 31, 2020.

Section 45(3) of the Act states that 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.

Although the Tenancy Agreement referred to in this hearing does not refer specifically to the use of video or surveillance cameras, it does refer to the *Residential Tenancy Act* and acknowledges that the Act will prevail and be adhered to. *Residential Tenancy Policy Guideline #6* notes that a breach of the entitlement to quiet enjoyment has been found by the courts to be a breach of a material term of a tenancy agreement. The standard of proof is high, as it is necessary to establish that there has been a significant interference with the use of the rental unit.

Two of the questions I will contemplate while considering the Tenants' claim are whether the installation of the surveillance camera and the related video recordings were a breach of the Tenants' right to quiet enjoyment; specifically, their right to reasonable privacy. And, if so, did the breach constitute a significant interference with the use of the rental unit to justify the early ending of the fixed term tenancy by the Tenants, pursuant to section 45(3) of the Act.

The Tenants submitted that they could see the video camera from inside their rental unit and were concerned that the camera could videotape their family inside of their unit. The Tenants sent a letter to the Landlord on August 19, 2020 and requested the camera be removed, asked for particulars about the system, and requested that any recordings of the Tenants' family be destroyed.

Both parties agreed that the Landlord responded in an email on August 19, 2020. Upon review of the email, I confirmed that the Landlord advised that the camera does not see into the windows of the rental unit, is motion activated, and that the footage automatically deletes within 24 hours.

I note that there is no evidence before me to demonstrate that the surveillance camera is capturing any video footage inside the Tenants' rental unit. The Landlord submitted that the camera does not capture video footage inside the rental unit, nor does it capture footage of movement directly in front of the rental unit.

After reviewing the submissions made by the Tenants and having considered the oral testimony of the parties, I find that the Tenants have failed to provide sufficient evidence to demonstrate that the Landlord's actions of setting up a surveillance camera is a breach of their privacy or how it has significantly impacted the Tenants' use of the rental unit. Furthermore, I do not find the temporary video-capture of the Tenants' movements in common areas on the residential property is a breach of their reasonable privacy, pursuant to section 28 of the Act.

While considering the parties' claims, I have reviewed the undisputed submissions by the Landlord where the Tenants provided notice to the Landlord on August 13, 2020, that they intended on ending their fixed term tenancy early, on September 30, 2020. I also noted that the Tenants testified that they had moved out of the rental unit on August 18, 2020, prior to providing the Landlord with the notice, dated August 19, 2020, which stated that the Tenants would be ending the tenancy on August 31, 2020 if the Landlord continued to breach a material term. Based on this, I find that the Tenants began paying for alternate accommodations and making arrangements to end the tenancy before and regardless of the Landlord's email response on August 19, 2020.

The Tenants attempted to end the tenancy based on the Landlord's breach of a material term; however, based on the evidence presented during this hearing, I find that the Landlord did not breach the material term of reasonable privacy by installing a surveillance camera on the residential property. As a result, I find the Tenants failed to end their fixed term tenancy in accordance with the Act.

As the Tenants' claim for compensation is based on the alleged breach of quiet enjoyment by the Landlord, I dismiss the Tenants' monetary claim for compensation without leave to reapply.

Section 38 of the Act states that the landlord has fifteen days, from the later of the day the tenancy ends or the date the landlord received the tenant's forwarding address in writing to return the security deposit to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an Application for Dispute Resolution claiming against the deposit. If the landlord does not return or file for Dispute Resolution to retain the deposit within fifteen days and does not have the tenant's agreement to keep the deposit, or other authority under the Act, the landlord must pay the tenant double the amount of the deposit.

In this case, if we are to use the Tenants' definition of the end of the tenancy, August 31, 2020, the Landlord would have had to return the security deposit or make an Application for Dispute Resolution by September 15, 2020. I find that the Landlord made an Application for Dispute Resolution for a monetary order for unpaid rent and requested to apply the security deposit to their claim, on September 2, 2020. As a result, I dismiss the Tenants' claim for double the security deposit.

Based on the testimony from all parties, the Tenants vacated the rental unit at the end of August 2020 and prior to the end of their fixed term tenancy, that being November 30, 2020. The Landlord provided undisputed testimony that the Tenants failed to pay their September 2020 rent in the amount of \$1,600.00, in accordance with the Tenancy Agreement and section 26 of the Act. The Landlord testified that she attempted to locate new tenants for the rental unit through various advertising initiatives and was successful in doing so for October 1, 2020. As a result, I find the Landlord has established a monetary claim for unpaid rent in the amount of \$1,600.00, pursuant to section 67 of the Act.

The Landlord has also claimed compensation for the fees paid to advertise the rental unit. The Landlord has demonstrated that they incurred the fees of \$225.28 as a result of the Tenants early move out, contrary to the Tenancy Agreement. The Landlord provided receipts for the advertising fees and testimony that new tenants were found for October 1, 2020. As a result, I find the Landlord has established a monetary claim for the advertising fees in the amount of \$225.28, pursuant to section 67 of the Act.

The Landlord has established a monetary claim, in the amount of \$1,925.28, which includes \$1,600.00 in unpaid rent, \$225.28 in advertising fees 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 in the amount of \$800.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a Monetary Order for the balance of \$1,125.28.00 in accordance with section 67 of the Act.

As I have dismissed the Tenants' monetary claim, I find that the Tenants' claim is without merit. As such, I dismiss the Tenants' claim for compensation for the filing fee.

### Conclusion

Pursuant to Section 67 of the Act, I grant the Landlord a Monetary Order for \$1,125.28.

In the event that the Tenants do not comply with this Order, it may be served on the Tenants, 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: December 16, 2020

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Residential Tenancy Branch