



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL-S, MNDCL-S, FFL

### Introduction

The landlord seeks compensation for unpaid, and loss of, rent pursuant to section 67 of the *Residential Tenancy Act* ("Act") and seeks to retain the tenant's security deposit in partial satisfaction of their claim under section 38(6) of the Act. In addition, they seek recovery of the application filing fee under section 72 of the Act.

The landlord filed an application for dispute resolution on September 2, 2020 and a hearing was held on December 14, 2020. The landlord attended the hearing and was given a full opportunity to be heard, present testimony, make submissions, and call witnesses; the tenant did not attend the hearing.

The landlord gave oral and documentary evidence that they served two Notice of Dispute Resolution Proceeding packages on the tenant, one to the address on the tenant's driver's license and one to the address of her current residence. Copies of the Canada Post registered mail delivery confirmations were tendered into evidence. Based on all of the evidence before me I find that the tenant was served by the landlord in compliance with the Act and the *Rules of Procedure*.

### Issues

1. Is the landlord entitled to \$3,080.00 for loss of rent?
2. Is the landlord entitled to \$100.00 for the application filing fee?
3. Is the landlord entitled to retain the \$770.00 security deposit?

### Background and Evidence

I only review and consider oral and documentary evidence meeting the requirements of the *Rules of Procedure*, to which I was referred, and which is relevant to determining the issues. Only relevant evidence needed to explain my decision is reproduced below.

The parties signed and executed a written tenancy agreement on August 8, 2020, for a fixed-term tenancy that was to start on September 1, 2020 and which was to end (though this was missing from the tenancy agreement due to the tenant's omission) in either July or August 2021. Monthly rent was \$1,540.00 and the tenant paid a security deposit of \$770.00, which the landlord currently holds in trust pending the outcome of this application. A copy of the tenancy agreement, along with an addendum, was submitted into evidence.

On August 30, 2020, two days before the tenancy was to start, the landlord received a text message from the tenant in which the tenant advised that due to a personal matter the tenant was not going to take occupancy of the rental unit. The tenant ignored further requests from the landlord in respect of providing proper notice and that the tenant would be owing rent for September 1, 2020.

The landlord immediately began showing the rental unit for immediate occupancy, showing it to everyone who would look at it, and even called a previous potential tenant. Unfortunately, not very many people were interested in taking the rental unit before November 1, 2020. Fortunately, the landlord was able to secure a new tenant for November 1, 2020, though they ultimately rented it out at a lower rate. All told the landlord lost two months' worth of rental income.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

### **Claim for Loss of Rent**

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

Section 45(2) of the Act deals with the method by which a tenant can end a fixed term tenancy. This section of the Act reads as follows:

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, the tenant gave improper notice to end the tenancy before it even started and failed to pay even the minimum amount of rent of \$1,540.00 which was due (pursuant to section 26 of the Act) two days after she gave notice. But for the tenant's ending the tenancy in breach of section 45(2) of the Act the landlord would not have suffered the loss of rent in the amount of \$3,080.00. Indeed, it was only due to the landlord's efforts at finding a new tenant for November 1, 2020 (not to mention at a lower rent) that the tenant has not ended up owing even more.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for \$3,080.00.

### **Claim for Application Filing Fee**

Section 72(1) of the Act permits an arbitrator to order payment of a fee under section 59(2)(c) by one party in a dispute to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was successful, I grant her claim for reimbursement of the \$100.00 filing fee.

### **Summary of Award and Retention of Security Deposit**

A total of \$3,180.00 is therefore awarded to the landlord.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if "after the end of the tenancy, the director orders that the landlord may retain the amount." As such, I order that the landlord may retain the tenant's security deposit of \$770.00 in partial satisfaction of the above-noted award.

The balance of the award is issued by way of a monetary Order in the amount of \$2,410.00. This Order is issued in conjunction with this decision, to the landlord.

Conclusion

The landlord's application is granted.

I grant the landlord a monetary order of \$2,410.00, which must be served on the tenant. If the tenant fails to pay the landlord within 15 days of being served, then the landlord may file and enforce the monetary order in the Provincial Court of British Columbia (Small Claims Court).

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: December 14, 2020

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Residential Tenancy Branch