



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, MNRL-S, FFL

### Introduction

The landlord applies for a monetary award for unpaid rent and for the cost to repair damage to the premises.

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Are the tenants responsible for the rent that came due August 1, 2020? If so, has the landlord mitigated his loss? Did the tenants cause damage in the rental unit? If so, what is a reasonable cost of repair?

### Background and Evidence

The rental unit is a one bedroom basement suite. There is a written tenancy agreement. The tenancy started in September 2019 for a one year fixed term to August 31, 2020. The monthly rent was \$1600.00, due on the first of each month. The landlord holds an \$800.00 security deposit.

The tenants gave notice in early June that they intended to vacate the rental unit at the end of July in order to move to Vancouver Island. There is no evidence the landlord consented to the early termination of the fixed term tenancy. The landlord began to offer the rental unit for rent. The tenants provided pictures for the landlord to use. The landlord located a new tenant for a tenancy to start September 1, 2020.

The three parties attended together at the premises on July 26 and conducted a move out inspection. A report was prepared and signed by the parties. Pursuant to the report, it was agreed the landlord would keep \$150.00 of the security deposit.

The landlord says that the inspection was cut short because the tenant DS became “aggressive.” The tenant SP says the inspection lasted almost an hour, with the landlord looking in places with a flashlight and testing all the appliances. She says it was the landlord who became aggressive and refers to a video taken at the time.

SP testifies and the landlord did not dispute that on receiving the tenants’ notice the landlord began to advertise the rental unit on Craigslist. She monitored the ads. The first ad, in early June offered the rental unit for \$1850.00 per month plus utilities. The rent for the tenants SP and DS had been \$1600.00 including utilities. She says that the asking rent was reduced to \$1800.00 for most of July and then reduced again to \$1750.00 after the tenants moved out. She refers to Residential Tenancy Policy Guideline #5, “Duty to Minimize Loss.”

During her evidence SP referred to a number of documents in the nature of screenshots and three video clips. The landlord testifies he did not receive the evidence. SP produced a Canada Post registered mail tracking number, the Canada Post record for which shows the alleged material to have been delivered to the landlord on November 30. SP says she and DS sent follow up a text, emails and a voice message to the landlord enquiring whether he received the evidence package, all without response. The landlord denies receiving those. He indicates his mail may have been stolen and the emails and texts may have been automatically sent to a “junk” folder or the like.

### Analysis

I consider it more likely than not that the landlord has received the tenants’ documentary evidence. However, I make no determination about that question. The evidence before me leads to the conclusions below without reference to the tenants’ documentary evidence.

### Damage to the Premises

Section 35 of the *Residential Tenancy Act* (the “RTA”) requires a landlord and tenant to attend at the end of a tenancy, inspect it for damage and cleanliness and for the landlord to prepare a report for the parties to sign. The purpose of s. 35 is to ascertain

and document any damage or cleaning required. Often a tenant will carry out more cleaning or repair once the parties have agreed that it needs to be done. The need to ascertain and document damage and cleaning requirements is to avoid exactly the situation this claim presents: a landlord reinspecting the rental unit and raising issues not dealt with while the tenants were present. A tenant in such a circumstance has no lawful opportunity to return to the rental unit and assess the new allegation(s) or to acquire evidence of it in the form of photos or videos.

In the circumstances of this case, I find that if either the landlord or DS became “aggressive” it was obviously not to an extent that short circuited the inspection process. Whatever might have happened, the parties continued on to complete a full move-out condition report, settle on a monetary figure the landlord was allowed to keep from the deposit money and sign the report.

I find the report is binding on the landlord and he is relegated to retaining the \$150.00 the parties agreed he could retain from the security deposit.

#### August Rent

The purpose of a fixed term tenancy is to ensure a tenant will have a continuous tenancy and the landlord will have a continuous tenant for the fixed term. Neither a landlord nor a tenant may unilaterally end the tenancy before the end of the fixed term. A tenant who leaves early will be responsible for all the rent accruing during the fixed term and the landlord will be obliged to attempt to mitigate his loss by finding a replacement tenant.

Residential Tenancy Policy Guideline #5 “Duty to Minimize Loss” provides:

#### **Loss of Rental Income**

When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to:

1. re-rent the rental unit at a rent that is reasonable for the unit or site; and
2. re-rent the unit as soon as possible.

In this case the landlord sought a new tenant at a rent over 15% higher than the rent he’d negotiated with these tenants less than a year earlier. In addition, he sought a tenant who would pay for utilities in addition to the higher rent, whereas the utilities had been included in the rent from these tenants. The landlord has presented no objective

evidence to show that such a significant increase was justified by the current rental market. Indeed, the lowering of the asking rent in July and August would appear a clear indicator that it was not.

I find that though the tenants were responsible for the August rent, the landlord has failed to mitigate his loss by offering the rental unit to others at a rent that is reasonable for the rental unit.

I dismiss the landlord's claim for recovery of the August rent.

### Conclusion

The landlord's claim is dismissed. The tenants are entitled to the return of the \$800.00 security deposit, less the amount of \$150.00 the landlord was authorized to retain in the condition report.

The tenants will have a monetary order in the amount of \$650.00.

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 15, 2020

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Residential Tenancy Branch