



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding C Q Enterprises Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT-S FFL

### Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The agent CT attended for the landlord. The tenant attended. Both parties had opportunity to provide affirmed testimony, present evidence and make submissions. . The hearing process was explained.

### Issue(s) to be Decided

Is the landlord entitled to the relief requested?

### Background and Evidence

The parties entered into a 1-year fixed term tenancy beginning April 13, 2020 which ended on September 15, 2020 after the tenant provided notice and vacated the unit. Monthly rent \$930.00 and was payable on the 15<sup>th</sup> of the month. At the beginning of the

tenancy, the tenant provided a security deposit and a pet deposit each in the amount of \$465.00 for a total of \$930.00. The landlord retained both deposits without the authorization of the tenant. A copy of the tenancy agreement was submitted.

A condition inspection report was conducted on moving in and moving out. The landlord brought an application for dispute resolution 15 days following the end of the tenancy.

The landlord claimed liquidated damages in the amount of \$425.00. The landlord based the claim on a provision of the tenancy agreement which stated that, if the tenant vacated the unit prior to the end of the term, the tenant is required to pay the landlord liquidated damages in this amount.

The tenant acknowledged that the agreement contained a liquidated damages clause. However, the tenant asserted the landlord is not entitled to this claim because of the tenant's efforts to find a replacement occupant which included advertising and referral of potential applicants to the landlord. The tenant requested a return of the full amount of the deposits.

The landlord responded that the amount of liquidated damages was a reasonable estimate at the time the tenancy agreement was signed of the costs of advertising and locating a suitable tenant for the unit if the tenant vacated before the end of the term. The landlord also testified that the landlord advertised the unit, screened applicants, and incurred administrative time and expenses. The landlord claimed a monetary award of \$425.00 as well as reimbursement of the filing fee for a total of \$525.00. The landlord requested authorization to apply the deposits to the amount owing for a balance of the deposits owing the tenant of \$405.00.

The landlord claimed the following:

ITEM	AMOUNT
Liquidated Damages	\$425.00
Reimbursement filing fee	\$100.00
(Less deposits)	(\$930.00)
<b>Return of Deposits to Tenant</b>	<b>(\$405.00)</b>

## Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

1. The claimant must prove the existence of the damage or loss.
2. Secondly, the claiming party must that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.
3. Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.
4. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

In this case, the onus is on the landlord to prove the landlord is entitled a claim for a monetary award.

The above-noted criteria are based on sections 7 and 67 of the Act. Section 7(1) of the Act provided that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement.

These sections state as following:

- 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) 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.

...

67. Without limiting the general authority in section 62 (3) [. . .] if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

*Did respondent fail to comply with Act, regulations, or tenancy agreement?*

In this dispute, the tenancy was a fixed term tenancy. The tenant ended the tenancy on a date that was earlier than the date specified in the tenancy agreement.

As the landlord entered into a new tenancy right away, the landlord does not claim for loss of rent.

Nevertheless, based on the agreement of the parties that the tenant vacated before the end of the fixed term, I conclude that the tenant breached section 45(2)(b) of the Act by ending the tenancy early.

### *Liquidated Damages*

*Residential Tenancy Policy Guideline #4* examines the issue of liquidated damages and notes,

“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... There are a number of tests to determine if a clause is a penalty clause or a liquidated damages clause. These include:

- A sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach.
- If an agreement is to pay money and a failure to pay requires that a greater amount be paid, the greater amount is a penalty.

- If a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.

If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent.”

The tenant acknowledged that the agreement contained a liquidated damages clause. However, the tenant stated that the landlord did not establish any reasonable costs or time in finding another occupant of the unit and the tenant exerted most effort.

The landlord stated that the amount of liquidated damages was a reasonable estimate of the costs of advertising and locating a suitable tenant for the unit if the tenant vacated before the end of the term. They asserted that the amount was a reasonable estimate at the beginning of the tenancy of the landlord’s anticipated expenses and complies with the definition of allowable liquidated damages in the Guideline.

The landlord provided credible and reliable testimony of considerable correspondence with the tenant and potential applicants as well as significant corresponding administrative effort.

The cost of re-renting a unit to a new tenant is part of the ordinary business of a landlord. Throughout the lifetime of a rental property, a landlord must engage in the process of re-renting to new tenants numerous times. However, one important reason why a landlord enters into a fixed-term tenancy agreement is to attempt to limit the number of times the landlord must incur the costs of re-renting.

I find it more likely than not that, when a tenant breaches a fixed term tenancy agreement resulting in an early end to the tenancy, the landlord incurs the costs of re-renting earlier than it would have without the breach. This exposes the landlord to extra costs of re-rental.

In this case, the liquidated damages clause is intended to compensate the landlord for losses resulting from the costs of re-renting a unit after the tenant’s breach.

I find that the landlord showed how the \$425.00 claimed for liquidated damages in the tenancy agreement was a genuine pre-estimate of the loss and complies with the definition of allowable liquidated damages in the Guideline. I also find the landlord has met the burden of proof on a balance of probabilities that there was time and effort involved in the re-renting of the unit.

For the above reasons, I find the landlord has met the burden of proof with respect to all aspects of the claim. I allow the landlord's claim for liquidated damages.

### *Filing fee and Deposit*

As the landlord has been successful in the landlord's claim, the landlord is entitled to reimbursement of the filing fee. Further to the offsetting provisions of section 72, the landlord is entitled to apply the deposit to the award.

### *Summary*

In conclusion, I made the following award in favour of the landlord:

ITEM	AMOUNT
Liquidated Damages	\$425.00
Reimbursement filing fee	\$100.00
(Less deposits)	(\$930.00)
<b>Monetary Order – Tenant</b>	<b>(\$405.00)</b>

### Conclusion

I grant the landlord a monetary award in the amount of \$525.00 which may be paid from the deposits. I direct the landlord to return the balance of the deposits of \$405.00 to the tenant and I grant the tenant a monetary order in this amount. This Order may be filed and enforced in the courts of the Province of British Columbia.

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: January 21, 2021

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Residential Tenancy Branch