



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, MNRL-S, MNDCL-S, FFL

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on July 31, 2020, wherein the Landlord requested monetary compensation from the Tenants, authority to retain their security deposit and to recover the filing fee.

The hearing was conducted by teleconference on November 23, 2020 and continued on February 9, 2021. Both parties called into the hearings and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The original hearing was adjourned to permit service of evidence between the parties. When the hearing reconvened on February 9, 2021, the parties agreed that all evidence that each party provided had been exchanged. No other issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. Should the Landlord be authorized to retain the Tenant's security deposit?

### 3. Should the Landlord recover the filing fee?

#### Background and Evidence

This tenancy began May 15, 2019 and was renewed May 1, 2020. Monthly rent was originally \$2,600.00 and the Tenants paid a \$1,300.00 security deposit. The Tenants signed a new agreement which reduced their rent to \$2,300.00 effective May 1, 2020. A copy of this second agreement was provided in evidence before me and which confirmed this tenancy was to end on November 15, 2020.

In the hearing before me the Landlord filed a Monetary Orders Worksheet in which they set out their monetary claim as follows:

Doors	\$300.00
Visitor parking pass	\$25.00
Dog puke fine	\$141.74
Cleaning	\$200.00
Rental placement fee of ½ months' rent	\$1,150.00
<b>TOTAL CLAIMED</b>	<b>\$1,816.75</b>

In support of the claim, the Landlord's Property manager, N.M., also testified as follows. He stated that two doors were damaged by the Tenants including one of the closet doors in the entry and one in the master bedroom; photos of the doors were provided in evidence before me. N.M. confirmed that the Landlord spent \$300.00 to replace the doors.

N.M. stated that the Tenants did not return the visitor parking pass when the tenancy ended.

In terms of the \$141.74 claimed for a "dog puke fine" N.M. stated that the Tenant's dog was sick in the elevator, which was shown in video footage. The strata was billed by the cleaning company who in turn billed the Landlord for this cost.

In terms of the \$200.00 claimed for cleaning, N.M. stated that the Landlord hired cleaners as she wanted the rental unit to be cleaned to a higher standard than that which was left by the Tenants. N.M. confirmed that the Tenants left the unit reasonably clean and as such they did not wish to pursue this amount.

N.M. stated that the Tenants gave notice to end their tenancy on June 22, 2020 effective July 31, 2020. The unit was re-rented as of August 7, 2020 (which he later clarified to be August 7, 2020) at a rate of \$2,300.00 per month.

N.M. confirmed that the per diem rate for rent for August is \$74.19; however, the Landlord did not claim compensation for this loss of rent, rather, the Landlord sought \$1,150.00 as a "Lease Placement Fee" which they paid to the property management company. N.M. confirmed the Landlord sought this sum pursuant to the tenancy agreement which specifically provided for Liquidated Damages in paragraph 5 which reads as follows:

5. **LIQUIDATED DAMAGES.** If the tenant breaches a material term of this Agreement that causes the landlord to end the tenancy before the end of any fixed term, or if the tenant provides the landlord with notice, whether written, oral, or by conduct, of an intention to breach this Agreement and end the tenancy by vacating, and does vacate before the end of any fixed term, the tenant will pay to the landlord the sum of \$ **2300** as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit. Payment of such liquidated damages does not preclude the landlord from claiming future rental revenue losses that will remain unliquidated.

N.M. confirmed the Landlord sought only \$1,150.00 the sum which was paid to the property management company to find new tenants as quickly as possible when the Tenants ended their tenancy early.

In response to the Landlord's claims the Tenant, S.A., testified as follows:

In terms of the \$300.00 claimed by the Landlords, S.A. stated that the doors were patched and did not require replacement. S.A. stated that he was willing to come back and do another "patch job" if the Landlord wanted him to, but that in all cases the doors did not need to be replaced.

In terms of the visitor parking pass, S.A. confirmed the Tenants agree to reimburse the Landlord the **\$25.00** claimed.

S.A. also confirmed that they agreed to reimbursing the Landlord the **\$141.75** claimed for cleaning the elevator.

In terms of the \$1,150.00 claimed for the "Rental Placement Fee", S.A. stated that they do not believe they should be liable for paying this due to COVID-19 and the other Tenant, C.H. losing her job. The Tenants provided proof of their financial situation as well as their efforts to obtain financial assistance. S.A. stated that they were agreeable to paying the loss of rent for six days, in the amount of \$445.16. N.M. also confirmed that they gave the Landlord as much notice as they could and moved out on July 19, 2020 and completed the move out inspection on that date, despite paying rent until July 31, 2020.

## Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

[www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides 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* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

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

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

**37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

The Landlord seeks the sum of \$300.00 for the cost to replace the doors. The Tenants submit that they repaired the damage and that the doors did not need to be replaced. I have reviewed the photos submitted by the Landlord in evidence. It appears from these photos, that sanding and perhaps another coat of filler would allow the doors to be repaired and painted without any noticeable damage. I am not persuaded, based on the evidence before me, that the doors required replacement. I therefore dismiss the Landlord's claim for the replacement cost of the doors.

The Tenants agreed to reimburse the **\$25.00** visitor parking pass fee and the **\$141.74** charged to the Landlord due to their dog being ill in the elevator. I therefore award the Landlord this sum.

The Landlord withdrew their claim for cleaning costs during the hearing before me.

The Landlord sought the sum of \$1,150.00 as a cost to re-rent the rental unit. The evidence before me confirms this was a fixed term tenancy which was originally to end on November 15, 2020. The evidence confirms the Tenants ended their tenancy prior to the expiration of this fixed term.

A tenant in a fixed term tenancy is potentially liable for the rent owing for the balance of their rental term, subject to the landlord's obligation to mitigate/minimize their losses. Pursuant to clause 5 of the tenancy agreement, these Tenants also agreed to pay liquidated damages in the amount of \$2,300.00 in the event they ended the tenancy early.

While I acknowledge the financial hardship suffered by these Tenants as a result of loss of employment due to COVID-19, and accept the Tenants' testimony that they gave the Landlord as much notice as possible, this does not excuse them from their obligation to pay rent pursuant to the tenancy agreement and section 26 of the *Act*.

In this case, the Landlord rented the unit as of October 9, 2020, some nine days after the effective date of the Tenants' notice to end their tenancy. This was accomplished through the assistance of a property management team for which the Landlord paid \$1,150.00, representing half a month's rent.

I find the Landlord mitigated their losses by hiring the property management team to re-rent the unit as soon as possible. The amount charged by the team was half of the liquidated damages amount agreed to by the parties when they signed the tenancy agreement, and significantly less than that which the Tenants may have been expected to pay had the unit remained vacant to the end of their term. I therefore find this amount to be recoverable from the Tenants and I award the Landlords the sum of **\$1,150.00**.

Having been substantially successful with their Application I also award the Landlord recover of the **\$100.00** filing fee.

### Conclusion

The Landlord's claim for compensation from the Tenants is granted in part; the Landlord is entitled to the sum of **\$1,316.75** for the following:

Visitor parking pass	\$25.00
Dog puke fine	\$141.75
Rental placement fee of ½ months' rent	\$1,150.00
<b>TOTAL CLAIMED</b>	<b>\$1,316.75</b>

The Landlord may retain the Tenants' \$1,300.00 security deposit towards the amounts awarded and is granted a Monetary Order for the **\$16.75** due. Should the Tenants not pay as Ordered, this Order must be served on the Tenants and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: February 10, 2021

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Residential Tenancy Branch