



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Skyline Living  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on November 13, 2020 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent; and
- an order granting recovery of the filing fee.

The Landlord's Agent, R.N. and the Tenant attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application packages and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me 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.

### Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to an order granting the recovery of the filing fee, pursuant to Section 72 of the *Act*?

### Background and Evidence

The parties testified and agreed that the fixed term tenancy began on March 6, 2020 and was meant to end on February 28, 2021. The Tenant paid a security and pet damage deposit, both in the amount of \$734.00 which have since been returned to the Tenant in full. The Landlord's Agent indicated that the tenancy ended on October 21, 2020. The Tenant disagreed and stated that she moved out of the rental unit on September 30, 2020.

The Landlord's Agent stated that he based the move out date according to the file notes and the date listed on the condition inspection report. The parties agreed that the Tenant was not present at the time of the move out condition inspection which was conducted by the Landlord on October 21, 2020. The Tenant stated that she had emailed the Landlord on July 27, 2020 to advise them that she was seeking to move out of the rental unit on September 30, 2020. The Landlord's Agent confirmed receipt. The Tenant stated that she served the Landlord with a Mutual Agreement to End Tenancy dated August 3, 2020 with an effective move out date of September 30, 2020. The parties agreed that the Landlord received the Mutual Agreement, however, the Landlord did not sign the Agreement given that the Tenant has entered into a fixed term agreement.

The Tenant stated that she vacated the rental unit on September 30, 2020 as she had indicated to the Landlord on several occasions. The Tenant stated that she received a call from the Landlord on October 15, 2020 asking about the rent payment for October 2020. The Tenant notified the Landlord that she had moved out of the rental unit.

The Landlord's Agent stated that the Landlord was unable to re-rent the rental unit until December 1, 2020, therefore, the Landlord is seeking to recover the loss of rent for October and November 2020 in the amount of \$3,026.00. The Tenant stated that the Landlord did not demonstrate that they made any attempts to re-rent the rental unit. The Landlord's Agent stated that he was uncertain when the Landlord advertised the rental unit for rent, however, it would not have been any later than 10 days beyond the move out inspection, or October 31, 2020.

### Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

According to Section 45 of the *Act*, 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.*

The Residential Tenancy Policy Guideline #30 states that during the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties. A tenant may end the tenancy if the landlord has breached a material term of the tenancy agreement. The tenant must give proper notice under the Legislation. Breach of a material term involves a breach which is so serious that it goes to the heart of the tenancy agreement.

Policy Guideline #8 describes a material term as a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. Furthermore, Policy Guideline #8 indicates that in order to end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- (a) *that there is a problem;*
- (b) *that they believe the problem is a breach of a material term of the tenancy agreement;*
- (c) *that the problem must be fixed by a deadline included in the letter, and that*

*the deadline be reasonable; and*  
*(d) that if the problem is not fixed by the deadline, the party will end the tenancy.*

I find that the Tenant breached Section 45 of the Act by ending the fixed term tenancy early. As such, I find that the Landlord is entitled to compensation in the amount of **\$1,513.00** which represents one month of rent. I find that the Landlord provided insufficient evidence to demonstrate that they mitigated their loss by making attempts to re-rent the rental unit once they learned that the Tenant was intending the end the tenancy as of September 30, 2020. As such, I find that the Landlord is not entitled to any further compensation for loss of rent.

Having been partially successful, I find the Landlord is entitled to recover the **\$100.00** filing fee paid to make the Application. Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$1,613.00.

### Conclusion

The Tenant breached the Act by ending their fixed term tenancy early. The Landlord is granted a monetary order in the amount of **\$1,613.00**. The order should be served to the Tenants as soon as possible and may be filed in and enforced as an order of the Provincial Court of BC (Small Claims).

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: March 04, 2021

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Residential Tenancy Branch