



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL-S FFL

### Introduction

The landlord seeks \$5,180.00 in compensation against his former tenant pursuant to section 67 of the *Residential Tenancy Act* ("Act"). He also seeks recovery of the \$100.00 filing fee under section 72 of the Act.

Both parties attended the hearing on March 6, 2021, which was held by teleconference, and there were no issues of service raised by the parties.

### Issues to be Decided

1. Is the landlord entitled to compensation?
2. Is the landlord entitled to recovery of the filing fee?

### Background and Evidence

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

The tenancy began on November 15, 2019 and ended on July 15, 2020. The tenancy was a fixed-term tenancy that was slated to end on November 30, 2020. Monthly rent was \$1,850.00 which was due on the first day of the month. The tenant paid a security deposit of \$925.00 which the landlord has retained pending the outcome of this dispute. A copy of the written Residential Tenancy Agreement was submitted into evidence.

On June 15, 2020, the tenant gave notice to end the tenancy early and requested permission to assign or sublet the tenancy. The landlord did not grant this request. Nevertheless, tenant vacated the rental unit and did not pay any rent since July 1, 2020.

The landlord testified that it was his understanding, based on reading the Act, that if there are six or more months remaining on a fixed-term tenancy, that he cannot unreasonably withhold consent when a tenant wishes to assign a tenancy or sublet. However, he explained that there were five and half months remaining on the tenancy when the tenant asked to assign or sublet. Thus, his interpretation of the Act (section 34, which is discussed in further detail below) was that he was not obligated to consent. He testified that “I wanted to hold and honour the tenancy agreement that was in place.”

That said, he explained that he was willing to compromise with the tenant, but only if a new tenant could be found who (1) passed the same application screening process and (2) was willing to sign a new twelve-month fixed-term tenancy agreement. Nothing ever really came of that offer, however, the landlord added.

July 1, 2020 rolled around, and the tenant did not pay the rent. On July 9 the landlord’s agent issued a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”), a copy of which was submitted into evidence. The 10 Day Notice, which was not disputed by the tenant, indicated that unless rent was paid within five days that the tenancy would end on July 26, 2020. That was also the date by which the tenant would be required to vacate the rental unit.

On July 15, 2020, the tenant moved out of the rental unit, and a condition inspection report was completed shortly thereafter. On or about July 28, 2020, the rental unit was advertised as being available for rent. Rent was listed at \$1,995.00. Eventually, new tenants were secured, and they signed a tenancy agreement (a copy of which was in evidence) in which their tenancy began on September 25, 2020. Monthly rent was \$1,895.00.

The landlord seeks compensation comprised of unpaid rent for July 2020, a loss of rent for August 2020, and a partial loss of rent for 24 days in September 2020, for a total of \$5,180.00.

The tenant testified that he “tried to follow all the rules” and that he tried to find a new tenant to take over the tenancy. He had to end the fixed-term tenancy because of a change in employment situation that necessitated his being closer to work. Nevertheless, he took efforts to find potential new tenants, and he “did everything possible to minimize the loss [from] breaking the contract.” It was his understanding, however, that the prospective tenants did not pass the landlord’s application screen process.

## 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.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

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) [*director's authority respecting dispute resolution proceedings*], 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.

The tenant gave notice to end the fixed-term tenancy before he was permitted to do so under section 45(2) of the Act, which states that

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 notice on June 15, 2020 that he intended to end the tenancy effective July 15, 2020. In other words, the tenant's notice to end the tenancy was in breach of section 45(2)(b) of the Act.

At this point, I will briefly turn to the issue of assignment or sublet. Sections 34(1) and (2) of the Act state the following:

- (1) Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.
- (2) If a fixed term tenancy agreement has 6 months or more remaining in the term, the landlord must not unreasonably withhold the consent required under subsection (1).

In this dispute, there were, as of June 15, 2020, 5 months and 16 days (including the end date) remaining in the tenancy. In other words, there were not 6 months or more remaining in the term. Consequently, the landlord was not bound by the requirement of subsection 34(2) of the Act to withhold, unreasonably or not, consent to assign. The landlord was fully within his legal right to refuse consent for the tenant to assign.

Next, we turn to the legal obligation of a tenant to pay rent. Section 26(1) of the Act states that

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

In this dispute, the tenant was required to pay \$1,850.00 on the first day of the month. The landlord gave evidence that the tenant did not pay this amount on July 1, 2020, and the tenant did not dispute this. Though, he did remark that he thought that his security deposit "would take care of the time I was there [in the rental unit]."

Taking into consideration all the 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 his claim for compensation for unpaid rent for July 2020. But for the tenant's failure to pay rent, the landlord would not have suffered this monetary loss. Further, the landlord, through his agent, took reasonable steps to mitigate that loss by issuing the Notice. Therefore, I award the landlord \$1,850.00 for unpaid rent for July 2020.

In respect of the remainder of the compensation sought, the landlord or his agent advertised the rental unit "not longer after" – on July 28 – a condition inspection report was completed on July 21. Given that the landlord or his agent were aware as early as June 15 that the tenant planned on moving out July 15 (regardless of whether the tenant's notice to end tenancy was legal or not), and given that the tenant failed to pay rent on July 1, I have a difficult time finding that the landlord did whatever was reasonable to minimize the then-potential loss of rent. It strikes me as somewhat lackadaisical that the landlord or agent could have advertised for the rental unit as early as June 15 or at least as early as July 9 (when they issued the Notice), but then only decided to do so on July 28. As an aside, while the rental unit was listed for a rent that was slightly higher than what the tenant was paying, I do not find this minor increase to be substantial enough to ward off prospective tenants.

In any event, but for the tenant's decision to end the fixed-term tenancy before it was supposed to end, the landlord would not have suffered the continued loss of rent from August 1 to September 24, 2020. The amount of lost rent has been established to be \$3,330.00. As for the fourth step, however, I do not find that the landlord did whatever was reasonable to minimize a potential loss in rent. Waiting almost two weeks after the tenant vacated the rental before advertising is not reasonable. For this reason, I must reduce the claim by a nominal amount of 10% to \$2,997.00.

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 recover the cost of the filing fee. As the landlord was successful, I grant their claim for the \$100.00 filing fee. In summary, I award the landlord a total of \$4,947.00.

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 \$925.00 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 \$4,022.00. This monetary order, which is issued to the landlord in conjunction with this decision, must be served by the landlord on the tenant in order for it to be enforceable.

Conclusion

I hereby grant the landlord's application.

I hereby order that the landlord retain the tenant's security deposit of \$925.00.

I hereby grant the landlord a monetary order in the amount of \$4,022.00, which must be served on the tenant. If the tenant fails to pay the landlord, the landlord may file and enforce the 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: March 8, 2021

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Residential Tenancy Branch