



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Capilano Property Management and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      Tenant: MNSD FF  
Landlord: MNR MNDC MNSD FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on May 25, 2021. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”).

The Landlord was represented at the hearing by an agent, herein referred to as the “Landlord”. The Tenant attended the hearing with her translator, collectively referred to as the “Tenant.” The Tenant confirmed receipt of the Landlord’s application and Notice of Dispute Resolution Proceeding on January 21, 2021, and evidence package on May 1, 2021. The Tenant did not raise any issue with respect to service of those documents. I find the Landlord sufficiently served their application and evidence for the purposes of this proceeding.

The Tenant provided an expresspost mail receipt showing she sent a package to the Landlord on January 13, 2021, but stated that package contained her forwarding address in writing (which the Landlord acknowledged getting).

With respect to the Tenant’s application and evidence for this hearing, she stated she sent her Notice of Dispute Resolution Proceeding package, along with her evidence, to the Landlord on January 25, 2021, also by expresspost. During the hearing, the Tenant provided a tracking number to corroborate this but a search on the Canada Post website during the hearing revealed no tracking information, as the number was invalid. The number was confirmed several times with the Tenant during the hearing and is noted on the front page of this decision. The Landlord denied getting this package and stated that the only thing he received by mail from the Tenant was her forwarding address on or around January 13, 2021.

I note the Tenant failed to provide a registered mail receipt for her application and evidence package, which she claims to have sent on January 25, 2021. The tracking number she provided yielded no corroborating information, and I find the Tenant has failed to demonstrate that she sufficiently served her Notice of Hearing and evidence package to the Landlord. As such, I dismiss her application, and decline to consider the evidence contained within this package, as there is insufficient information to show it has been served in accordance with section 88 and 89 of the Act. The Tenant was given nearly 20 minutes in the hearing to locate tracking information, and to clarify what was sent, to where, and when. Despite this, the Tenant was unable to provide sufficient clarity and corroborating evidence showing she mailed her package to the Landlord.

All parties provided affirmed testimony and were provided the 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 submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

#### Issues to be Decided

- Is the Landlord entitled to a monetary order for damage or loss under the Act, and for unpaid rent?
- Is the Landlord authorized to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38?

#### Background and Evidence

A copy of the Tenancy Agreement was provided into evidence, which shows that monthly rent was set at \$1,195.00 and was due on the first of the month. A security deposit of \$597.50 was collected by the Landlord at the start of the tenancy, and is still being held. The Tenancy Agreement shows that the Tenant was under a fixed term tenancy starting on July 1, 2020, running until June 30, 2021. Although a copy of the tenancy agreement was provided into evidence by the Landlord, the addendum is missing.

The Tenant stated that she sent her forwarding address in writing on January 13, 2021, by expresspost mail. The Landlord acknowledged receiving this forwarding address in writing that same day. The Landlord filed an application against the deposit on January 20, 2021.

Both parties confirmed that the Tenant moved out of the rental unit on December 31, 2020. The Landlord stated that the Tenant sent him an email on December 12, 2020, stating that she was going to be moving out at the end of December. The Landlord stated that they replied to the Tenant the following day, but indicated that this would only be acceptable if they could find a replacement tenant for January 1, 2021. The Landlord stated that, despite reposting the rental advertisement the following day, they were unsuccessful in procuring a new set of tenants for January 1, 2021.

The Landlord confirmed that they posted the ad on multiple sites for a reduced rent of \$1,175.00. The Landlord stated that they showed the rental unit over 10 times during December and January, but did not find new Tenants until mid-January, with a tenancy start date of February 1, 2021. The Landlord is seeking to recover January rent, in the amount of \$1,195.00, because the Tenant broke her lease, and gave short notice.

The Tenant stated that she moved out of the rental unit because there were too many issues with it. The Tenant stated that there were repairs that were necessary at the start of the tenancy, although she acknowledged that these repair issues were largely fixed a couple of days after she moved in. The Tenant also stated that there were mice, and cockroaches, which were an ongoing concern, and this is why she moved out. The Tenant was asked when, and if she informed the Landlord of these issues with the rental unit, in particular the mice and cockroaches. However, she provided an unclear explanation as to when she told the Landlord about these issues, and what she said.

The Landlord acknowledged getting a complaint from the Tenant about mice in the rental unit in October 2020, and again in November 2020, and stated that each time, they had a pest control company come, inspect the unit, and provide their opinion. The Landlord provided copies of the pest control reports, one from October 20, 2020, and one from November 19, 2020. Both reports note minimal or no activity, and no follow up required. The Tenant alleges she was worried about mice activity and impacts on her family. However, the Tenant had no admissible documentary evidence to corroborate what, if any, pest activity was present.

The Landlord is seeking liquidated damages in the amount of \$597.50. The Landlord stated that the Tenant agreed to this clause, as per the term in the addendum. However, the Landlord did not provide a copy of this addendum, or the copy of the liquidated damages clause. The Landlord pointed to the second page of the tenancy agreement, which specifies that "breaking lease will constitute forfeit of security deposit and 1 month of rent".

The Tenant does not feel she should have to pay the liquidated damages amount because of all the issues with the rental unit.

The Landlord is also seeking \$126.00 for “drape cleaning”. The Landlord pointed to a term in the addendum of the tenancy agreement, which specifies that the Tenant was required to clean the drapes, or pay to have them professionally cleaned, at the end of the tenancy. The Landlord stated that this was not done, and they had to pay to have this done by a third party. The Landlord did not point to any photos of the blinds. The Landlord stated that when the move-out inspection report was completed on December 31, 2020, the lack of blind cleaning was noted, but the Tenant did not agree to the Landlord’s characterization of the condition of the rental unit and refused to sign the move-out report.

### Analysis

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 in sections 7 and 67 of the *Act*.

In total, the Landlord is seeking 3 items and they are addressed below, as follows:

- 1) \$1,195.00 – January rent

I accept that the Tenant was under a fixed term tenancy agreement spanning from July 2020, until June 2021. This is supported by the tenancy agreement provided into evidence. I note the following portion of the *Act*:

### **How a tenancy ends**

*44 (1) A tenancy ends only if one or more of the following applies:  
(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:*

- (i) section 45 [tenant's notice];*
- (i.1) section 45.1 [tenant's notice: family violence or long-term care];*
- (ii) section 46 [landlord's notice: non-payment of rent];*
- (iii) section 47 [landlord's notice: cause];*
- (iv) section 48 [landlord's notice: end of employment];*
- (v) section 49 [landlord's notice: landlord's use of property];*
- (vi) section 49.1 [landlord's notice: tenant ceases to qualify];*

- (vii) section 50 [tenant may end tenancy early];*
- (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;*
- (c) the landlord and tenant agree in writing to end the tenancy;*
- (d) the tenant vacates or abandons the rental unit;*
- (e) the tenancy agreement is frustrated;*
- (f) the director orders that the tenancy is ended;*
- (g) the tenancy agreement is a sublease agreement.*

### **Tenant's notice**

*45 (2) 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.*

*(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.*

In this case, I find there is no evidence any mutual agreement was reached with respect to ending the tenancy before the expiry of the fixed term. The Tenant appears to have given notice by way of an email sent on December 12, 2020, to end the tenancy. It appears the Tenant was unhappy with the alleged rodent issues in the rental unit. However, I find there is insufficient evidence to support that this issue was such that it would entitle the Tenant to end the tenancy early, due to a breach of a material term of the tenancy agreement.

I note that in order for a tenancy to end due to breach of a material term, several parameters must be met. I turn to *Policy Guideline #8 Unconscionable and Material Terms* which states the following:

*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:*

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy.*

*Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof.*

I note the Tenant put some of her concerns in writing in the fall of 2020 (regarding the rodent/pest issues). However, there is insufficient evidence that she gave a clear warning that she would end the tenancy if the issues were not addressed, and specifically that it was a breach of a material term of the tenancy agreement. There is insufficient evidence that any alleged rodent activity was such this would be a breach of a material term of the tenancy agreement. I also note that if the Tenant was unhappy with the rodents/pests or there were issues she wanted remedied, that weren't being completed, she could have filed an application with the Residential Tenancy Branch, rather than unilaterally deciding that she had sufficient basis to end the tenancy. In summary, I find the Tenant did not have sufficient cause to end the tenancy early, and I find she is bound by the fixed term tenancy agreement she signed and entered into.

I do not find the Tenant was in a position to legally end her tenancy in the manner she did, by email on December 12, 2020. I find the Tenant breached section 45(2) of the Act by giving Notice in the manner she did, and I find she is liable for the Landlord's rental losses due to her unlawful notice, before the end of the fixed term.

I note the Landlord re-posted the ad for re-rental of the unit a day after receiving the Tenant's email in December, saying she would be moving out. I note the Landlord reposted the unit for less rent, and had multiple showings. I find the Landlord sufficiently mitigated the lost rent for January, and I find the steps taken by the Landlord were reasonable under the circumstances. Ultimately, the Landlord lost one month worth of

rent in January 2021, and I find the Tenant is liable for this amount, in full. I award the Landlord \$1,195.00 for this item.

2) \$597.50 – Liquidated Damages

I note the Landlord is seeking this amount because the Tenant breached her fixed term tenancy agreement. However, the Landlord has failed to upload the addendum of the tenancy agreement, which lays out that term, and what it entails. I do not find the verbiage included on page 2 of the tenancy agreement is sufficiently clear such that it could be considered an enforceable liquidated damages term. Without further evidence showing what was agreed to, in writing, under the tenancy agreement and the addendum, I find the Landlord has failed to meet the burden of proof to show the Tenant is liable for a liquidated damages sum. I dismiss this item, in full.

3) \$126.00 – Drape Cleaning

It appears the Landlord is seeking this amount because the Tenant agreed in the addendum of the tenancy agreement to clean the blinds before she moved out (or have them professionally cleaned.) However, as stated above, the Landlord failed to upload a copy of the addendum, and it is not sufficiently clear what the agreement was regarding drape cleaning. Further, I do not find the evidence sufficiently demonstrates that the drapes were so dirty or neglected that they would require cleaning by the Tenant as a matter of course. I find the Landlord has failed to sufficiently demonstrate that the Tenant is liable for this amount. I dismiss this item, in full.

Further, section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was partially successful with this application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

Also, pursuant to sections 72 of the Act, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount owed by the Tenant. In summary, I grant the monetary order based on the following:

<b>Claim</b>	<b>Amount</b>
January rent	\$1,195.00

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Filing fee	\$100.00
Less: Security Deposit currently held by Landlord	(\$597.50)
<b>TOTAL:</b>	<b>\$697.50</b>

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### Conclusion

The Landlord is granted a monetary order in the amount of **\$697.50**, as specified above. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: May 26, 2021

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Residential Tenancy Branch