



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL-S

### Introduction

On February 8, 2021 the Landlord submitted an Application for Dispute Resolution (the “Application”), seeking relief pursuant to the *Residential Tenancy Act* (the “Act”) for the following:

- a monetary order for unpaid rent; and
- an order granting authorization to retain the security and pet damage deposits.

The Landlord, the Tenant, and the Tenant’s Counsel S.K. attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As there were no issues raised with respect to the receipt of these documents, I find that they were sufficiently served pursuant to Section 71 of the *Act*.

The parties were given 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 relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Should the Landlord be authorized to apply the security deposit and pet damage deposit against their claim, in accordance with Section 72 of the *Act*?

### Background and Evidence

The parties testified and agreed to the following; the parties entered into a three month fixed term tenancy which started on December 1, 2020 until February 28, 2021. During the tenancy, the Tenants were required to pay rent in the amount of \$1,200.00 which was due on the first day of each month. The Tenants paid a security deposit in the amount of \$600.00 as well as a pet damage deposit in the amount of \$150.00, for a total of \$750.00 in deposits currently being held by the Landlord.

The Landlord is claiming \$600.00 for loss of rent for February 2021, because of Tenant (A.S.) vacating the rental unit early on January 31, 2021. The Landlord stated that the other Tenant (R.K.) had notified her in December 2020 that Tenant (A.S.) was deciding to vacate the rental unit early. The Landlord stated that she texted Tenant (A.S.) to confirm on December 28, 2020. Both parties provided a copy of the text message which confirmed that the Landlord received the Tenant's notice to end the tenancy on January 31, 2021.

The Landlord stated that Tenant (A.S.) was not entitled to ending the fixed term tenancy early and that the parties had not agreed to varying the tenancy agreement. The Landlord stated that Tenant (R.K.) remained in the rental unit until the end of the fixed term tenancy and paid his portion of the rent for February 2021.

The Tenant responded by stating that the Landlord asked her to leave the rental unit as the Tenants were not getting along. The Tenant stated that the parties had agreed to end the fixed term tenancy early, however, this was discussed over the phone. The Tenant referred to the text messages which would indicate that the Landlord had knowledge of the Tenant (K.S.) wishing to vacate the rental unit by January 31, 2021. The Tenant's copy of the text message contains further texts which offers the Landlord the opportunity to conduct showings of the rental unit on only four hours' notice. The Tenant stated that the Landlord did not conduct any showings before she vacated the rental unit.

### Analysis

Based on the affirmed 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.

Section 26(1) of the *Act* confirms:

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.

According to Section 45(2) 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.

According to Section 45(3) of the Act, 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 that the Tenant provided insufficient evidence to demonstrate that the Landlord breached a material term of the tenancy agreement. I find that the Tenant provided insufficient evidence to demonstrate that the parties agreed to end the fixed term tenancy early. As such I find that the Tenant was not entitled to end the fixed term tenancy early, pursuant to Section 45(2) of the Act.

While I find that the Tenant breached the Act by ending the fixed term tenancy early, I find that the Landlord had knowledge on December 28, 2020 that Tenant (A.S.) was vacating the rental unit on January 31, 2021. In this circumstance, I find that the Landlord provided insufficient evidence to demonstrate her efforts in re-renting the rental unit to another occupant. I accept the Tenant's testimony that the Landlord did not

conduct any showings before Tenant (A.S.) vacated the rental unit. As such, I find that the Landlord did not mitigate her loss.

The Landlord is claiming \$600.00 for loss of rent for February 2021. While I have found that the Tenant has breached the Act, I have also found that the Landlord did not mitigate her loss. As such, I find that the Landlord is entitled to a monetary award in the amount of \$300.00 which represents half of the Landlord's claim.

I find it appropriate in the circumstances to order that the Landlord retain \$300.00 from the \$750.00 of deposits held in satisfaction of the claim ( $\$750.00 - \$300.00 = \$450.00$ ).

Pursuant to section 67 of the *Act*, I find Tenant (A.S) is entitled to a monetary order in the amount of \$450.00, which represents the remaining balance of her security and pet damage deposit less the previously mentioned deduction.

### Conclusion

The Landlord has established an entitlement to monetary compensation in the amount of \$300.00 which has been deducted from the security and pet damage deposits. The Tenant is granted a monetary order in the amount of \$450.00 which represents the remaining balance of the Tenant's deposits. The order should be served to the Landlord as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (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: June 15, 2021

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Residential Tenancy Branch