



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, FFL

### Introduction

This hearing convened as a result of a Landlords' Application for Dispute Resolution, filed on December 22, 2020, in which the Landlords sought monetary compensation from the Tenants in the amount of \$1,500.00 including recovery of the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on April 30, 2021. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties were cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No 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.

### Preliminary Matter—Date and Delivery of Decision

The hearing of the Tenant's Application concluded on April 30, 2021. This Decision was rendered on June 2, 2021. Although section 77(1)(d) of the *Residential Tenancy Act* provides that decisions must be given within 30 days after the proceedings, conclude,

77(2) provides that the director does not lose authority in a dispute resolution proceeding, nor is the validity of the decision affected, if a decision is given after the 30 day period.

### Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenants?
2. What should happen with the Tenants' security deposit?
3. Are the Landlords entitled to recover the filing fee?

### Background and Evidence

This one-year fixed term tenancy began September 1, 2020 and was to end September 1, 2021. Monthly rent was \$1,800.00 and the Tenants paid a \$900.00 security deposit and \$900.00 pet damage deposit.

The nature of the Landlords' claim relates to their request for unpaid rent due to the Tenants breaching the fixed term tenancy agreement and vacating the rental unit early. Specifically, the Tenants sent an email on November 30, 2020 seeking to end their tenancy effective December 31, 2020.

The Landlord testified that she immediately contacted her property manager, K.B. and asked her to advertise the unit as soon as possible.

The rental unit was re-rented as of January 16, 2021. In the claim before me the Landlord sought \$800.00 in loss of rent for the January 1-15, 2021 time period as well as \$400.00 as a property management fee paid to K.B. and a \$100.00 filing fee.

K.B. testified as well. She confirmed that she is the Landlord's property manager and has been in this position for approximately six months. She stated on November 30, 2020 the Landlord contacted her about re-renting the rental unit.

K.B. stated that on November 30, 2020 she texted the Tenant D.M. and explained that she was the hired property manager and that she would like to come over and take some photos of the rental unit. K.B. stated that she did not receive a response. She then re-texted on December 2, 2020 and the Tenant D.M. responded that afternoon. D.M. acknowledged that she received the first text and asked if she could take the

photos instead. K.B. then provided her email to receive the photos. On December 4, 2020 the Tenant texted to say she would take the photos the next day. K.B. confirmed she received some photos on December 6, 2020. She then texted her to ask about their schedule for showings. The Tenant stated that she wanted a virtual video and explained her concerns about COVID-19. K.B. confirmed she was okay with the virtual tour idea. On December 10, 2020 the Tenant stated that she was going to work on that video and get it to her the next day. When K.B. hadn't heard from the Tenant, she sent another message on December 14, 2020. The Tenant then explained she had exams going on and had a headache. K.B. stated that he had to connect with the Landlord, J.D., to explain the delay.

K.B. stated that she explained to the Landlord that she was having difficulty getting the video. Apparently, the Landlord contacted the Tenant and the video was received December 16, 2020. K.B. stated that she attended the walk through on December 19, 2020 and took more professional photos. K.B. stated that at that time she was able to speak to potential tenants and post an ad. She stated that once she had the resources it was fairly easy to find someone, but it does take some time. She stated that had they been able to do so in early December, they may have been able to rent it out in January 1, 2021.

In reply, the Tenant, I.B., testified as follows. He confirmed that the tenancy was for a fixed term. He alleged this was a mutual agreement to end the tenancy on December 31, 2020. He also noted that the Tenants offered to stay for the month of January 2021 and pay rent and would have done so had they known the Landlord would later seek rent for that time period.

The Tenant stated that the date they sent photos was on December 5, 2020. I.B. stated that they did help by sending photos and confirmed they sent the videos on 16<sup>th</sup>. The Tenant noted that they were both in university and when they asked for a video on December 11, 2020 they provided it as soon as possible.

The Tenant also stated that his mother is immunocompromised and as such they could not have potential COVID-19 exposure in the rental unit. The Tenants provided a copy of a document from LandlordBC where Landlords were advised to avoid showing a tenanted suite.

The Tenant also noted that they did move out 9 days early to facilitate the Landlord's attempts to re-rent the unit.

In reply, the Landlord confirmed that they re-rented the unit for \$2,100.00 such that they received \$1,050.00 for half a months rent as well as an additional \$300.00 per month for the balance of the term to September 1, 2021.

### 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.

In the case before me the Landlords seek monetary compensation for alleged losses incurred as a result of a breach of the one year fixed term tenancy.

The parties agree the Tenants gave notice to end their tenancy prior to the expiration of the fixed term. As such they are potentially liable for the rent owing for the balance of the term.

The contractual rent owing was \$1,800.00 from September 1, 2020 to September 1, 2021.

The undisputed evidence is that Tenants vacated the rental unit on December 19, 2020. The unit was re-rented as the of January 16, 2021 at a monthly rate of \$2,100.00. In the claim before me the Landlords sought compensation for loss of rent from January 1-15, as well as the \$400.00 property management fee.

As the subject tenancy was for 12 months, the Tenants were obligated to pay a total of \$21,600.00 in rent. They paid rent from September to December for a total of \$7,200.00. The Landlord then re-rented the unit as of January 16 at a rate of \$2,100.00 such that they received 7 months at \$2,100.00 and half a month at \$1,050.00 for a total of \$15,750.00. The amount payable under the new tenancy agreement (\$15,750.00) and the amounts already received by the Tenants(\$7,200.00) is in excess of the contractual amount (\$21,600.00) such that the Landlords have not suffered a financial loss, and will in fact receive \$22,950.00 or \$1,350.00 more than the contractual amount.

**I therefore find the Landlords have failed to prove they suffered any financial loss as a result of the Tenants' breach of the fixed term tenancy agreement. The evidence confirms the Landlords will in fact profit from this breach. The Landlords' Application is therefore dismissed.**

The Tenants are entitled to return of their security deposit of \$900.00 and their pet damage deposit in the amount of \$900.00 for a total award of \$1,800.00. In furtherance of this I grant them a Monetary Order in the amount of \$1,800.00. This Order must be served on the Landlords and may be filed and enforce in the B.C. Provincial Court (Small Claims Division).

Conclusion

The Landlords failed to establish they suffered a financial loss such that their request for monetary compensation from the Tenants is dismissed without leave to reapply.

The Tenants are entitled to return of their security and pet damage deposit and are granted a Monetary Order in the amount of \$1,800.00.

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 2, 2021

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Residential Tenancy Branch