



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

**Dispute Codes:** MNDCL-S, MNRL-S, FFL

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- and a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

DJ ("landlord") appeared as agent for the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package ("Application"), amendment, as well as the evidence package. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with copies of the landlord's Application, amendment, and written evidence. The tenant did not submit any written evidence for this hearing.

### **Issue(s) to be Decided**

Is the landlord entitled to monetary compensation applied for?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed term tenancy was to begin on April 1, 2021, with monthly rent set at \$1,150.00, payable on the first of the month. The tenant paid \$300.00 of the \$575.00 security deposit, which the landlord still holds. Both parties signed a tenancy agreement on March 17, 2021 for this fixed-term tenancy, but the tenant decided not to move in.

The tenant responded that they tried to view the rental unit many times, which the tenant testified was very dirty. The tenant testified that they had found a review online that stated that there was mould inside the building. The tenant testified that they had attempted to inspect the rental unit on March 31, 2021 prior to moving in, but the appointment was cancelled due to emergency flooding. The tenant testified that they were refused a subsequent inspection.

The landlord is seeking a monetary order to recover the loss of April 2021 rent, as well as the liquidated damages of \$575.00 as set out in the tenancy agreement to cover the costs of re-renting the rental unit after the tenant had changed their mind. The landlord testified that the first viewing took place while the rental unit was still tenanted, and despite this, the tenant had agreed to enter into the fixed-term tenancy. The landlord testified that they would have addressed any deficiencies before the tenant had decided to change their mind, and as a result they did not have the opportunity to address any issues. The landlord submitted evidence to support that they had attempted to re-rent the rental unit in order to mitigate their losses.

### **Analysis**

Section 44 of the *Residential Tenancy Act* reads in part as follows:

**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:...

*(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;*

(c) the landlord and tenant agree in writing to end the tenancy;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

**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.*

The landlord provided undisputed, sworn testimony that the tenant ended this tenancy in a manner that does not comply with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenant obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. No applications for dispute resolution have been filed by the tenant in regards to this tenancy.

Section 16 of the *Act* states the following:

**16** The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

I find that both parties had entered into a fixed-term tenancy agreement, and the evidence is clear that the tenant did not comply with the *Act* in ending this fixed term tenancy. I therefore find that the tenant terminated this tenancy contrary to Sections 44 and 45 of the *Act*. Although the tenant's expectations were not met, the tenant has an obligation to end this tenancy or address the issues in a manner that is compliant with the *Act*.

I am satisfied that the landlord had made an effort to mitigate the tenant's exposure to the landlord's monetary loss of rent for this fixed-term tenancy, as is required by section 7(2) of the *Act*. I, therefore, allow the landlord's monetary claim for loss of rental income for the month of April 2021 in the amount of \$1,150.00.

I must now consider whether the landlord is entitled to the \$575.00 in liquidated damages.

Residential Tenancy Branch Policy Guideline #4 with respect to Liquidated Damages includes the following guidance with respect to the interpretation of such clauses:

*A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. In considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into.*

*There are a number of tests to determine if a clause is a penalty clause or a liquidated damages clause. These include:*

- A sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach.*
- If an agreement is to pay money and a failure to pay requires that a greater amount be paid, the greater amount is a penalty.*
- If a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.*

*If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent. Generally clauses of this nature will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum...*

I have reviewed the written tenancy agreement as well as the attached document titled "tenancy agreement additional terms" as submitted by the landlord. I am satisfied that the landlord had clearly stipulated on the tenancy agreement that the tenant would be responsible for the amount claimed by the landlord as liquidated damages. I am satisfied that the amount to be a genuine and reasonable pre-estimate of the losses associated with locating a new tenant in the event of an early termination of the fixed-term tenancy. Accordingly, I allow this portion of the landlord's monetary claim.

I find that the landlord's Application has merit and that the landlord is entitled to recover the fee for filing this Application.

It is confirmed that the landlord still holds the partial security deposit paid by the tenant. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the security deposit paid, in partial satisfaction of the monetary claim.

**Conclusion**

I issue a Monetary Order in the amount of \$1,525.00 in the landlord's favour as set out below:

| Item                                 | Amount            |
|--------------------------------------|-------------------|
| Loss of Rental Income for April 2021 | \$1,150.00        |
| Liquidated Damages                   | 575.00            |
| Filing Fee                           | 100.00            |
| Security Deposit Paid by Tenant      | -300.00           |
| <b>Total Monetary Order</b>          | <b>\$1,525.00</b> |

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: September 28, 2021

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Residential Tenancy Branch