



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PACIFIC QUORUM PROPERTIES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCL-S, FFL

### Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

Is the landlord entitled to a monetary award for losses arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

### Background, Evidence

The landlord's agent gave the following testimony. The one-year fixed term tenancy was to begin on May 1, 2021 but the tenant did not take possession of the unit. The monthly rent of \$1600.00 was to be payable on the first of each month. The tenant paid a security deposit of \$800.00 which the landlord still holds in trust. The agent testified that they seek \$1600.00 for liquidated damages as per their tenancy agreement as the tenant broke the lease.

The tenant gave the following testimony. The tenant testified that she did a condition inspection report with the previous property manager; Dexter, on April 10, 2021. The tenant testified that she would only move in if the following items were addressed; repair broken stove, repair broken lights, repair broken toilet, caulking around the tub, repair broken kitchen sink and have the unit fully cleaned and sanitized.

The tenant testified that property manager assured her that all those items would be done. The tenant testified that on April 28, 2021 she was told she could pick up the keys. When she arrived at the unit, she found that none of the items were done and that the unit was uninhabitable. The tenant testified she was told that the property manager was sick and didn't have time to address the agreed upon repairs and cleaning. The tenant testified that she didn't want to live in a construction zone and asks for her deposit back.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof.** The claimant

must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the landlords claim and my findings as follows.

The agent that appeared had no firsthand knowledge of this matter as she recently began managing this property as Dexter no longer works with the company. The agent was unable to provide sufficient evidence to show that the loss was a result of the tenant, quite the contrary.

The loss incurred by the landlord was a result of their own inaction and lack of communication with the tenant to make all reasonable efforts to minimize the impact on her. The tenant had no control as to the repairs and cleaning. When the tenant arrived to move into her new home, she found it unsuitable for occupation.

Based on the above, I find that the landlord is not entitled to the liquidated damages as they breached the terms of the agreement first as they did not provide the suite to the tenant as promised at move in. As a result, I dismiss the landlord's application in its entirety without leave to reapply.

### Conclusion

The landlord's application is dismissed in its entirety without leave to reapply. The landlord is to return the \$800.00 security deposit back to the tenant. I grant the tenant an order under section 67 for the balance due of \$800.00. This order may be filed in the Small Claims 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: November 18, 2021

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Residential Tenancy Branch