



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DEVONSHIRE PROPERTIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

MNRL-S, FFL

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on August 25, 2021 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on August 05, 2021 were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On August 30, 2021 the Landlord submitted additional evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that she does not believe any additional evidence was submitted to the Residential Tenancy Branch by the Landlord and no additional evidence was served to the Tenant. As the Landlord did not prove this evidence was served to the Tenant, it was not accepted as evidence for these proceedings. This evidence appears to be a duplicate of evidence previously submitted to the Residential Tenancy Branch.

On November 06, 2021 the Tenant submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Landlord, via email, although he does not know the date of service. The Landlord acknowledged receiving this evidence in November and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

### Preliminary Matter

At the hearing the Agent for the Landlord stated that the Landlord has applied to recover liquidated damages of \$1,012.50.

The Landlord was advised that there is no mention of a claim for liquidated damages on the Application for Dispute Resolution and, as such, that claim was not being considered at these proceedings.

In the Application for Dispute Resolution the Landlord claims \$4,050.00 for:

*Tenant provided short notice plus break of lease. Incentive of 1st and 14th month would be for free as incentive for renting with Beach Towers. We are requesting for August Rent as it has been cost for re-renting the apartment, still at the date (Aug.5th) unit has not been re-rented, plus first month incentive charge due to break lease.*

I find that this should be interpreted as a claim for lost revenue for August of 2021, in the amount of \$2,025.00 and a claim for the return of "incentive" rent for the first month of the tenancy (September of 2020) which the Tenant was not required to pay as an incentive for signing a fixed term tenancy agreement, in the amount of \$2,025.00.

As the Landlord has not clearly declared that the Landlord is also seeking compensation for liquidated damages, a claim for liquidated damages is not being considered at these proceedings.

I note that the Monetary Order Worksheet submitted by the Landlord also makes no reference to a claim for liquidated damages of \$1,012.50. I find that this Worksheet

strongly suggests the Landlord is claiming \$2025.00 in lost revenue for August of 2021 and \$2,025.00 in “incentive” rent from September of 2020.

Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent or unpaid utilities and to retain all of part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that:

- the parties signed a fixed term tenancy agreement, the fixed term of which began on September 01, 2021 and ended on October 31, 2021;
- the tenancy agreement required the male Tenant to pay monthly rent of \$2,025.00 by the first day of each month;
- the Tenant paid a security deposit of \$1,012.50; and
- on July 09, 2021 the Tenant gave the Landlord notice, via email, of their intent to vacate the rental unit on July 31, 2021.

The Agent for the Landlord stated that the Landlord received a forwarding address, in writing, when the final condition inspection report was completed on July 28, 2021.

The Agent for the Landlord stated the rental unit was vacated on July 28, 2021 and the Agent for the Tenant stated that it was vacated on July 31, 2021.

The Landlord is seeking compensation for lost revenue from August of 2021, in the amount of \$2,025.00. The Co-tenant stated that the Tenant understood the Landlord was claiming compensation for unpaid rent from August of 2021 and, as such, I find it reasonable to consider this claim.

The Agent for the Landlord stated that the Landlord began advertising the rental unit on various popular websites in early July of 2021 and that they were able to re-rent the unit for September 01, 2021.

The Co-tenant stated that the Tenant informed the Landlord, in the email sent on July 09, 2021, that the Tenant was ending the tenancy because they were being disturbed by construction noise. The Tenant acknowledged that the Landlord was not given any prior written notice that the Tenant was being bothered by construction noise. The Co-

tenant stated that in early July of 2021 she verbally informed an employee of the Landlord that the Tenant is being bothered by construction noise.

The Landlord is seeking to recover rent from September of 2020, in the amount of \$2,025.00. The Agent for the Landlord stated that this claim is being made on the basis that the Tenant was not required to pay rent for September of 2020 as an incentive for signing a fixed term tenancy agreement.

In the Notice of Dispute Resolution Proceeding the Tenant was informed that the Landlord is seeking \$4,050.00 because:

*Tenant provided short notice plus break of lease. Incentive of 1st and 14th month would be for free as incentive for renting with Beach Towers. We are requesting for August Rent as it has been cost for re-renting the apartment, still at the date (Aug.5th) unit has not been re-rented, plus first month incentive charge due to break lease.*

The Co-tenant stated that the Tenant understood the Landlord was claiming compensation for unpaid rent from September of 2021.

I find that the Tenant knew, or should have known from the information provided on the Notice of Dispute Resolution Proceeding, that the Landlord was seeking to recover the rent for September of 2020, which the Tenant was not required to pay as an incentive for signing the fixed term tenancy agreement. As such, I find it reasonable to consider this claim.

The Agent for the Landlord stated that she is not aware of anything in the tenancy agreement that requires the Tenant to pay rent for September of 2020 if the tenancy is ended prior to the end of the fixed term of the tenancy agreement.

### Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$2,025.00 by the first day of each month and that the Tenant entered into a fixed term tenancy agreement, the fixed term of which ended on October 31, 2021.

Section 45(2) of the Act permits a tenant to end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month

after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and 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.

On the basis of the undisputed evidence, I find that on July 09, 2021 the Tenant gave the Landlord notice, via email, of his intent to end the tenancy on July 31, 2021 and that the rental unit was vacated on, or before, July 31, 2021. I find that the Tenant did not comply with section 45(2) of the *Act* when he ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement.

I therefore find that the Tenant must compensate the Landlord for any losses the Landlord experienced as a result of the Tenant's non-compliance with the *Act*, pursuant to section 67 of the *Act*.

On the basis of the testimony of the Agent for the Landlord, I find that the Landlord made reasonable efforts to re-rent the unit for August 01, 2021 but, in spite of those efforts, the Landlord was unable to re-rent the unit until September 01, 2021. I therefore find that the Landlord is entitled to compensation of \$2,025.00 for the lost revenue the Landlord experienced in August of 2021.

Section 45(3) of the *Act* stipulates that 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.

Even if I accepted that construction noise on the residential property was a breach of the Tenant's right to quiet enjoyment of the rental unit, I would not conclude that the Tenant had the right to end this fixed term tenancy early pursuant to section 45(3) of the *Act*. In reaching this conclusion I was heavily influenced by the undisputed evidence that the Tenant did not give the Landlord written notice that the Landlord had breached a material term of the tenancy prior to serving the Landlord with notice of their intent to end the tenancy. In doing so, the Tenant did not give the Landlord the opportunity to remedy the situation or to compensate the Tenant with reduced rent.

I note that although the Tenant did not have the right to give notice to end this tenancy on July 09, 2021, the Tenant may have the right to compensation as a result of a breach of the Tenant's right to quiet enjoyment. As the Tenant's application for compensation

for a breach of his right to quiet enjoyment is not before me, that is not an issue I can determine at these proceedings. The Tenant retains the right to file an Application for Dispute Resolution claiming compensation for loss of quiet enjoyment. I have therefore not considered any of the Tenant's evidence that may support a claim for loss of quiet enjoyment.

On the basis of the undisputed evidence, I find that the Tenant was not required to pay rent for September of 2020 as an incentive for signing a fixed term tenancy agreement.

As there is nothing in the tenancy agreement that requires the Tenant to pay rent for September of 2020 if the tenancy is ended prior to the end of the fixed term of the tenancy agreement, I can find no legal reason that the Tenant would be required to pay rent for September of 2020 even though the tenancy ended prematurely. I therefore dismiss the Landlord's application for rent for September of 2020.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

### Conclusion

The Landlord has established a monetary claim, in the amount of \$2,125.00, which includes \$2,025.00 in lost revenue for August of 2021 and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenant's security deposit of \$1,012.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,112.50. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia 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 *Act*.

Dated: February 17, 2022