



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, FFL

### Introduction

On September 2, 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;
- an order granting authorization to retain the security deposit; and
- an order granting recovery of the filing fee.

The Landlord’s Agent A.W. and the Tenant 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, I find the above noted documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were given an 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.

### Issue(s) 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 against their claim, in accordance with Section 72 of the *Act*?
3. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

### Background and Evidence

The parties testified and agreed to the following; the tenancy started on November 1, 2018. During the tenancy, the Tenant was required to pay rent in the amount of

\$2,900.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$1,450.00 which the Landlord continues to hold. The tenancy ended on August 31, 2021.

The Landlord's Agent testified that she received a notice to end tenancy from the Tenant on August 14, 2021 indicating that she would be vacating the rental unit on September 1, 2021. The Landlord's agent stated that the Tenant did not provide sufficient notice prior to ending her tenancy. The Landlord's Agent stated that despite her efforts, she was unable to re-rent the rental unit until October 1, 2021. As such, the Landlord is claiming for loss of rent for the month of September 2021 in the amount of \$2,900.00.

The Tenant stated that the Landlord was seeking to sell the rental property. As such, the Tenant stated that she had a discussion with the Landlord's Agent in April 2021 stating that she would like to move once the house is listed on the market. The Tenant stated that this was sufficient verbal notice to the Landlord. The Tenant stated that she learned that the rental property had sold in August 2021, therefore, she served her written notice to the Landlord on August 14, 2021.

The Tenant stated that the sale fell through shortly after she served her notice, therefore, on August 18, 2021 she spoke with the Landlord's Agent offering to continue the tenancy just as long as the Landlord reimburse the security deposit she had paid for the unit she was moving to. The Tenant stated that the Landlord declined her request. Furthermore, the Tenant stated that the Landlord was seeking to raise the rent should the Tenant wish to continue her tenancy. As such, she decided to vacate the rental unit on August 31, 2021.

### Analysis

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.

According to Section 45 (1) of the *Act*; a tenant may end a periodic 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, and
- (b) 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 is claiming \$2,900.00 for loss of rent for the month of September 2021 as the Tenant did not provide the Landlord with sufficient notice to end tenancy. In this case, I find that the Tenant had no obligation to end her tenancy with the sale of the rental property, until such a time the Landlord served her with a valid Two Month Notice to End Tenancy, should the purchasers intended to occupy the rental unit. As such, I find that the Tenant under her own initiative sought to end the tenancy.

The parties agreed that the Tenant provided the Landlord with her notice to end tenancy on August 14, 2021 before the tenancy ended on August 31, 2021. I find that the Tenant ended the tenancy early, without providing the Landlord with proper notice pursuant to Section 45(1) of the *Act*.

I find the discussions which took place between the Tenant and the Landlord's Agent after the Tenant learned that the sale had fallen took place after the Tenant breached Section 45(1). I find that the Landlord would not have been obligated to reimburse the Tenant the security deposit she had paid for the unit she was moving to, nor would the Landlord have been permitted to raise the rent above the allowable amount should the tenancy continued. I do not find this discussion had an influence or an impact on the Tenant's breach of Section 45(1).

I find that the Landlord is entitled to monetary compensation in the amount of **\$2,900.00** for loss of rent for September 2021. Having been successful, I find the Landlord is entitled to recover the **\$100.00** filing fee paid to make the Application. I also find it appropriate in the circumstances to order that the Landlord retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$1,550.00, which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
Unpaid Rent	\$2,900.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	<i>-\$1,450.00</i>
<b>TOTAL:</b>	<b>\$1,550.00</b>

### Conclusion

The Landlord is granted a monetary order in the amount of \$1,550.00. The order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of BC (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: March 17, 2022

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Residential Tenancy Branch