



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW DECISION**

### **Dispute Codes:**

MNDL-S, MNRL-S, MNDCL-S, FFL

### **Introduction**

The Landlord filed an Application for Dispute Resolution in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for damage to the rental unit, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

This Application for Dispute Resolution was the subject of a dispute resolution hearing on November 16, 2021. On December 03, 2021 the Arbitrator considering the Application for Dispute Resolution granted the Landlord a monetary Order for \$1,600.00 and authority to keep the Tenants' security deposit of \$500.00.

The Tenants filed an Application for Review Consideration and on December 10, 2021 a Residential Tenancy Branch Arbitrator granted a new hearing. That Arbitrator suspended the monetary Order granted on December 03, 2021, pending the results of the new hearing.

The Landlord stated that the Residential Tenancy Branch notified him that a new hearing was being convened pursuant to an Application for Review Consideration filed by the Tenants.

The hearing on March 07, 2022 was convened to consider the merits of the Landlord's Application for Dispute Resolution. As the Tenants were advised in the Review Consideration Decision of December 10, 2021, they were required to serve the Landlord with notice of the hearing scheduled for March 07, 2022.

The Landlord stated that the Tenants did not serve him with notice of the hearing scheduled for March 07, 2022. He stated that he was aware that a new hearing was to be convened, he contacted the Residential Tenancy Branch to determine the date of the new hearing, and the Residential Tenancy Branch provided him with the information needed to join this teleconference.

The hearing on March 07, 2022 commenced at the scheduled start time of 11:00 a.m. The Landlord attended the teleconference at the scheduled start time. Although the Tenants did not attend the hearing on March 07, 2022, the hearing proceeded in their absence, pursuant to Rule 7.3 of the Residential Tenancy Branch Rules of Procedure. By the time the teleconference was terminated at 11:13 a.m., neither Tenant had attended the hearing.

The Landlord stated that the original Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in May of 2021 was personally served to each Tenant on May 28, 2021 and that it was served by registered mail to each Tenant on May 27, 2021. The Landlord submitted Canada Post documentation that corroborates his testimony that documents were sent to the Tenants by registered mail.

On the basis of the undisputed evidence, I find that hearing documents and evidence was served to each Tenant in May of 2021, and that evidence was accepted as evidence for these proceedings.

In November of 2021 the Tenants submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was not served to the Landlord. As the Tenants did not attend the hearing to establish that evidence was served to the Landlord and the Landlord did not acknowledge receiving their evidence, the Tenants' evidence was not accepted as evidence for these proceedings.

In January of 2022 the Landlord submitted additional evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was not served to the Tenants. As this evidence was not served to the Tenants, it was not accepted as evidence for these proceedings.

The Landlord was given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The Landlord affirmed that he

would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The Landlord was advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. He affirmed that he would not record any portion of these proceedings.

### Preliminary Matter

During the hearing the Landlord withdrew the application for \$2,000.00 for being denied access to the rental unit for the purposes of showing it to prospective tenants. As such, the only issues to be considered at these proceedings are whether the Landlord is entitled to compensation for lost revenue, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

### Background and Evidence

The Landlord stated that:

- the tenancy began on March 06, 2021;
- the parties signed a fixed term tenancy agreement, the fixed term of which ended on March 31, 2022;
- the Tenants agreed to pay rent of \$1,000.00 by the first day of each month;
- the Tenants paid a security deposit of \$500.00;
- the Tenants did not provide a forwarding address to the Landlord;
- on April 30, 2021 the Tenants placed a notice to end tenancy in his mailbox;
- the written notice declared their intent to vacate the rental unit, effective May 30, 2021;
- the rental unit was vacated on May 30, 2021;
- he is seeking compensation for lost revenue for June and July of 2021;
- no rent was received for June or July of 2021;
- the Landlord began advertising the rental unit on several popular websites in early May of 2021;
- the rental unit was re-rented in August of 2021; and
- the ability to re-rent the unit was impaired because the Tenants would not let prospective renters inside the unit to view it.

### Analysis

On the basis of the undisputed evidence, I find that the parties entered into a fixed term tenancy agreement, the fixed term of which began on March 06, 2021 and ended on March 31, 2022.

On the basis of the undisputed evidence, I find that the Tenants agreed to pay monthly rent of \$1,000.00 on the first day of each month; that they gave written notice to end the tenancy, effective May 30, 2021; and that they vacated the rental unit on May 30, 2021.

I find that the Tenants did not comply with section 45(2) of the *Residential Tenancy Act* (*Act*) when they ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement.

I find that in spite of reasonable efforts to re-rent the unit, the Landlord experienced lost revenue in June and July of 2021. As the Landlord would not have lost this revenue if the Tenants had not breached section 45(2) of the *Act*, I find that the Tenants must pay the Landlord \$2,000.00 in compensation for that lost revenue, pursuant to section 67 of the *Act*.

Section 45(3) of the *Act* permits a tenant to end a fixed term tenancy if the 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 tenancy gives written notice of the failure. In the absence of evidence that the Tenants gave the Landlord written notice that the Landlord had breached a material term of the tenancy and that the Landlord had not remedied the breach within a reasonable amount of time after receiving that written notice, I cannot conclude that the Tenants had the right to end this tenancy pursuant to section 45(3) of the *Act*.

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

### Conclusion

The Landlord has established a monetary claim, in the amount of \$2,100.00, which includes \$2,000.00 in lost revenue 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 find that

the Landlord has the right to retain the Tenants' security deposit of \$500.00 in partial satisfaction of this monetary claim, leaving a balance due of \$1,600.00.

The monetary Order for \$1,600.00 granted to the Landlord on December 03, 2021 remains in full force and effect. That Order may be served to the Tenants, 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: March 07, 2022

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Residential Tenancy Branch