



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding East Van Rentals Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      For the tenant: CNR, MNDCT, OLC, FFT  
For the landlord: MNR-DR, OPR-DR, MNDCL, FFL

### **Introduction**

This hearing dealt with a cross application. The tenant's application pursuant to the Residential Tenancy Act (the Act) is for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, the Residential Tenancy Regulation (the Regulation) or tenancy agreement, pursuant to section 67;
- an order for the landlord to comply with the Act, the Regulation and/or tenancy agreement, pursuant to section 62; and
- an authorization to recover the filing fee for this application, under section 72.

The landlord's application pursuant to the Act is for:

- a monetary order for unpaid rent, pursuant to section 26;
- an order of possession under the Notice, pursuant to sections 46 and 55;
- a monetary order for loss under the Act, the Regulation or tenancy agreement, pursuant to section 67; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. The landlord was represented by agent NC and assisted by counsel MD. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made

by the director commits an offence and is liable on conviction to a fine of not more than \$5 000.”

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials) via email. Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

#### Preliminary Issue – Vacant Rental Unit

At the outset of the hearing both parties agreed the tenant vacated the rental unit.

The tenant’s application for cancellation of the Notice and for an order for the landlord to comply with the Act and the landlord’s application for an order of possession are moot since the tenancy has ended and the tenant left the rental unit.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the tenant’s application for cancellation of the Notice and for an order for the landlord to comply with the Act and the landlord’s application for an order of possession.

#### Preliminary Issue – Jurisdiction

The tenant is claiming compensation for cleaning services. The claim for cleaning services includes compensation for the replacement of a recycling bin.

Both parties agreed they had a verbal agreement for the tenant to clean the rental building and a second rental building and the landlord paid the tenant \$500.00 per month for the cleaning services. The tenant paid monthly rent in full to the landlord and the landlord paid the tenant \$500.00 for the cleaning services.

The landlord affirmed the cleaning services agreement is a separate agreement not related to the tenancy agreement. The landlord affirmed the Residential Tenancy Branch does not have jurisdiction over the claim related to the cleaning services. The tenant affirmed the rental agreement and the cleaning services agreement are directly related.

The tenancy agreement was submitted into evidence.

Section 2(1) of the Act states: “Despite any other enactment but subject to section 4 [what this Act does not apply to], this Act applies to tenancy agreements, rental units and other residential property.”

The tenancy agreement does not reference the cleaning services agreement. The tenant paid monthly rent in full to the landlord and received the payment for the cleaning services. Based on the testimony offered by both parties and the tenancy agreement, I find the cleaning services agreement is not part of the tenancy agreement between the parties. The Act does not apply to the cleaning services agreement.

Thus, per section 2(1) of the Act, I have no jurisdiction to hear the tenant’s claim related to the cleaning services agreement.

### Issues to be Decided

Is the tenant entitled to:

1. a monetary order for loss?
2. an authorization to recover the filing fee?

Is the landlord entitled to:

1. a monetary order for unpaid rent?
2. a monetary order for loss?
3. an authorization to recover the filing fee?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord’s and tenants’ claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the applicants’ obligation to present the evidence to substantiate their application.

Both parties agreed they entered into a fixed-term tenancy from July 25, 2021 to July 31, 2022. Monthly rent of \$2,700.00 was due on the first day of the month. At the outset of the tenancy a security deposit of \$1,350.00 and a pet damage deposit of \$1,350.00 were collected and the landlord holds them in trust. The tenant vacated the rental unit on January 13, 2022. The tenancy agreement states:

05. Liquidated damages: if the tenant breaches a material term of this agreement that causes the landlord to end the tenancy before the end of any fixed term, or if the tenant

provides the landlord with notice, whether written, oral, or by conduct, of an intention to breach this agreement and end the tenancy by vacating, and does vacate before the end of any fixed term, the tenant will pay to the landlord the sum of \$500.00 as liquidated damages and not as penalty for all costs associated with re-renting the rental unit. Payment of such liquidated damages does not preclude the landlord from claiming future rental revenue losses that will remain unliquidated.

The tenant did not provide her forwarding address. The landlord does not know the tenant's forwarding address.

The tenant did not authorize the landlord to retain the security and pet damage deposits (the deposits). The tenant submitted her application on January 04, 2022. The landlord submitted his application on January 13, 2022.

The tenant is claiming for the return of the deposits.

The tenant is claiming compensation for moving expenses in the amount of \$1,458.31. The tenant affirmed that other tenants in the rental building were responsible for loud noise and used drugs in the rental building. The tenant asked the landlord to address her complaints about noise and drug usage and the landlord did not address her complaints. The tenant moved out because the rental unit was uninhabitable. The tenant did not know that she could apply for dispute resolution regarding the noise and drug usage complaints.

Landlord NC affirmed she received complaints from the tenant on November 29 and on December 08, 2021 and addressed both complaints by contacting other tenants.

The landlord is claiming for January 2022 unpaid rent. The tenant affirmed she did not pay January 2022 rent. The landlord re-rented the rental unit on February 01, 2022 for \$2,700.00 per month.

The landlord is claiming for liquidated damages in the amount of \$500.00.

Both parties submitted monetary order worksheets.

### Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

### Deposits

Section 38(1) of the Act requires the landlord to either return the deposits in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

I accept the uncontested testimony that the tenant did not provide her forwarding address. As such, the timeframe for the landlord to return the deposits has not started.

Thus, I dismiss the tenant's claim for the return of the deposits.

### Moving expenses

Based on the tenancy agreement, I find the tenant was aware the tenancy was for a fixed term from July 25, 2021 to July 31, 2022 and the tenant ended the tenancy early on January 13, 2022, contrary to section 45(2)(b) of the Act:

(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**

lis 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.

(emphasis added)

The tenant could have applied for dispute resolution regarding the noise and drug usage complaints.

Based on the tenant's testimony, I find the tenant failed to prove, on a balance of probabilities, that the landlord breached the Act.

I dismiss the tenant's claim for compensation for moving expenses.

### Unpaid rent

I accept the uncontested testimony that both parties agreed to a tenancy and the tenant was obligated to pay monthly rent in the amount of \$2,700.00 on the first day of the month.

Based on the undisputed testimony offered by both parties, I find the tenant did not pay rent due on January 01, 2022.

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act.

I award the landlord January 2022 rent in the amount of \$2,700.00.

### Liquidated Damages

The tenancy agreement provides for liquidated damages of \$500.00 if the tenant ends the tenancy before the end of the fixed-term.

Residential Tenancy Policy Guideline #4 states the following about liquidated damages:

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.

(emphasis added)

In this matter, I find that \$500.00 is a reasonable pre-estimate of the cost of re-renting the property and I do not find that this provision is a penalty. Accordingly, I find that the liquidated damages clause is valid.

The tenant ended the tenancy early. Accordingly, I award the landlord \$500.00 in liquidated damages.

#### Filing fees and summary

The tenant must bear the cost of her filing fee, as the tenant was not successful.

As the landlord was successful, I award the recovery of the filing fee paid for this application in the amount of \$100.00.

As explained in section D.2 of Policy Guideline #17, the Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord.

I order the landlord to retain the deposits of \$2,700.00 in partial satisfaction of the monetary award.

In summary, the landlord is entitled to:

<b>Expenses</b>	<b>\$</b>
Rent January 2022	2,700.00
Liquidated damages	500.00
Filing fee	100.00
Subtotal	3,300.00
Minus deposit	2,700.00
<b>Total</b>	<b>600.00</b>

### Conclusion

Pursuant to sections 26, 67 and 72 of the Act, I authorize the landlord to retain the \$2,700.00 deposits and grant the landlord a monetary order in the amount of \$600.00.

The landlord is provided with this order in the above terms and the tenant must be served with this order as soon as possible. Should the tenant 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: April 06, 2022

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Residential Tenancy Branch