



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Metcap Living Management Inc  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes **MNDCT, MNSD, FFT; MNRL-S, FFL, MNDCL**

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order for the landlord to return the security deposit pursuant to section 38;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

This hearing also dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The agent SP and the advocate NS attended ("the landlord"). The hearing process was explained, and the landlord had opportunity to call witnesses, provide testimony and submit evidence.

The landlord stated they were not recording the hearing. They provided their email address to which the Decision shall be sent.

*Preliminary Issue – the Tenant's Claim*

This hearing is a continuation of a hearing which began on January 14, 2022.

During that hearing, the parties acknowledged receipt of each other's Notice of Hearing and Application for Dispute Resolution including all evidence. By a Decision dated January 14, 2022, the matter was adjourned by consent.

The tenant did not attend the hearing adjourned to this day. I kept the teleconference line open from the scheduled time for the hearing for an additional 34 minutes to allow the tenant the opportunity to call.

The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

Rule 7.3 of the Rules of Procedure provides as follows:

*7.3 Consequences of not attending the hearing – If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to reapply.*

As the applicant did not attend the hearing and in the absence of any evidence or submissions, I order the tenant's application dismissed without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to the relief requested?

### Background and Evidence

The landlord provided uncontradicted testimony as the tenant did not attend the hearing. The landlord submitted complete documents in support of the claims which were well organized, credible and thorough.

The landlord submitted a copy of the tenancy agreement and testified as follows. The 1-year fixed term tenancy began on March 19, 2020, for monthly rental of \$2,578.00 payable on the first of the month. At the beginning of the tenancy, the tenant provided a security deposit of \$1,289.00.

The tenancy agreement included a liquidated damages clause requiring the tenant to pay one month's rent as liquidated damages in the event the tenant ended the tenancy early.

A condition inspection was conducted on moving in and moving out. Both the parties signed the inspections. A copy was submitted in evidence.

The tenant moved out of the unit on August 30, 2021, and did not pay rent for the last month of the tenancy.

The landlord acknowledged they had not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address was received in writing.

The landlord claimed the following:

ITEM	AMOUNT
Outstanding rent	\$2,578.00
NSF fee	\$25.00
One month rent as liquidated damages	\$2,578.00
Reimbursement of the filing fee	\$100.00
<b>TOTAL</b>	<b>\$5,281.00</b>

The landlord requested a Monetary Order of **\$3,992.00**

### Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations, or a tenancy agreement.

Section 7(1) of the *Act* provided that if a landlord or tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

1. The claimant must prove the existence of the damage or loss.
2. Secondly, the claiming party must that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.
3. Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.
4. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

In this case, the onus is on the landlord to prove the landlord is entitled a claim for a monetary award. The landlord provided credible testimony supported in all material aspects by well-organized and comprehensive documents including receipts and photographs.

I have considered all the evidence submitted by the landlord.

### *Outstanding Rent*

I have considered all the evidence submitted by the landlord including the tenancy agreement. I accept the landlord's evidence that the tenant vacated the unit leaving a balance of rent owing of \$2,578.00. I find the landlord has met the burden of proof with respect to the amount claimed in outstanding and accrued rent. I grant the landlord a monetary award in this amount.

### *Liquidated Damages*

The landlord claims liquidated damages in the amount of \$2,578.00. The landlord based the claim on a provision of the tenancy agreement which stated that, if the tenant vacated the unit prior to the end of the term, the tenant is required to pay the landlord liquidated damages in this amount.

The landlord testified that the amount of liquidated damages was a reasonable estimate of the costs of advertising and locating a suitable tenant for the unit if the tenant vacated before the end of the term. The amount was a reasonable estimate at the beginning of the tenancy of the landlord's anticipated expenses.

The cost of re-renting a unit to a new tenant is part of the ordinary business of a landlord. Throughout the lifetime of a rental property, a landlord must engage in the process of re-renting to new tenants numerous times. However, one important reason why a landlord enters into a fixed-term tenancy agreement is to attempt to limit the number of times the landlord must incur the costs of re-renting.

I find it more likely than not that, when a tenant breaches a fixed term tenancy agreement resulting in an early end to the tenancy, the landlord incurs the costs of re-renting earlier than it would have without the breach. This exposes the landlord to extra costs of re-rental. For that reason, I find there is a loss to the landlord associated with the tenant's breach.

In this case, the liquidated damages clause is intended to compensate the landlord for losses resulting from the costs of re-renting a unit after the tenant's breach.

*Residential Tenancy Policy Guideline #4* examines the issue of liquidated damages and notes,

*“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... 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.”*

Considering the above *Policy Guideline*, I find the liquidated damages of \$2,578.00 to be a reasonable and genuine pre-estimate of the loss.

Considering the evidence of the parties, the evidence submitted, and the burden of proof required, I find on a balance of probabilities that the landlord has established a claim against the tenant for the liquidated damages as a genuine pre-estimate of the costs of re-rental of the unit.

I therefore find that the landlord is entitled to a monetary award of \$2,578.00 for liquidated damages.

#### *Security deposit*

*Residential Tenancy Policy Guideline # 17 Security Deposit and Set off* provides guidance on calculation of the security deposit to be credited to the tenant.

The Guideline states that unless the tenant has waived the doubling of the deposit, the arbitrator will order the return of double the deposit in several situations. One situation is when the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing.

The landlord acknowledged they had not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing. acknowledged

Accordingly, I find the tenant is entitled to a doubling of the security deposit.

*Filing fee*

As the landlord has been successful in their claim, I order a monetary award for the landlord in the amount of \$100.00 for return of the filing fee.

*Summary of Award*

A summary of my award follows:

ITEM	AMOUNT
Outstanding rent	\$2,578.00
NSF fee	\$25.00
One month rent as liquidated damages	\$2,578.00
Reimbursement of the filing fee	\$100.00
(Less security deposit)	(\$1,289.00)
(Less doubling of security deposit)	(\$1,289.00)
<b>TOTAL</b>	<b>\$2,703.00</b>

I accordingly grant a Monetary Order to the landlord of \$2,703.00.

Conclusion

The landlord is entitled to a Monetary Order in the amount of \$2,703.00. This Monetary Order must be served on the tenants. The Monetary Order may be enforced in the courts of the province of BC.

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 21, 2022

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Residential Tenancy Branch