



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REAL PROPERTY MANAGEMENT  
EXECUTIVES and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCL-S, FFL

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on December 2, 2021. The Landlord applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- a monetary order for compensation for monetary loss or other money owed;
- an order permitting the Landlord to retain the security deposit; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by SP, an agent, who provided affirmed testimony. The Tenant did not attend the hearing.

On behalf of the Landlord, SP testified that the Notice of Dispute Resolution Proceeding package was served on the Tenant by Canada Post Xpresspost on December 8, 2021. According to SP, these documents were sent to a forwarding address in Newfoundland provided by the Tenant. The Landlord submitted copies of Canada Post receipts to support service in this manner. SP also testified that the Tenant indicated that the Landlord could retain the security deposit held in satisfaction of the losses claimed by the Landlord. Pursuant to section 71 of the Act, I find these documents were sufficiently served on the Tenant for the purposes of the Act.

The Tenant did not submit documentary evidence in response to the application.

SP was advised that Rule of Procedure 6.11 prohibits the recording of dispute resolution hearings.

On behalf of the Landlord, SP was provided with a full 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 and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to a monetary order for compensation for monetary loss or other money owed?
2. Is the Landlord entitled to an order permitting the Landlord to retain the security deposit?
3. Is the Landlord entitled to an order granting recovery of the filing fee?

### Background and Evidence

The tenancy agreement submitted into evidence indicates that the fixed-term tenancy began on May 1, 2021 and was expected to continue to April 30, 2022. However, SP testified that the Tenant vacated the rental unit without notice on or about November 10, 2021, before the end of the fixed term. At all material times, rent of \$1,000.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$500.00, which the Landlord holds.

The Application discloses a total claim for \$1,192.49 which is particularized in the application and in a Monetary Order Worksheet dated December 3, 2021.

First, the Landlord claims \$336.00 for the cost of cleaning the rental unit at the end of the tenancy. SP testified that the Tenant vacated the rental unit without notice and that the Landlord incurred the cost to clean it to a standard to re-rent. A move-out inspection dated November 10, 2021 was submitted into evidence. It described food left in the fridge, dishes and food left in cabinets, and dirty, scuffed walls. In support, the Landlord submitted an invoice from a third-party cleaner dated November 17, 2021. The amount claimed is also reflected in an invoice charging the amount back to the Tenant, a copy of which was submitted into evidence.

Second, the Landlord claims \$500.00 as liquidated damages. Section 4.16 of the tenancy agreement provides as follows:

If the tenant breaches a material term of this Agreement that causes the Landlord to end tenancy before the end of any fixed term, or of 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 equivalent to one half month's rent as liquidated damages and not as a 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.

SP confirmed that this aspect of the claim is in reliance on the Tenant's breach of the fixed-term tenancy agreement when he moved out of the rental unit before the end of the fixed term. The amount claimed is reflected in an invoice dated November 8, 2021, charging the amount back to the Tenant. A copy of the invoice was submitted into evidence.

Third, the Landlord claims \$31.49 for the cost of a handyman to inspect rental unit after the Tenant vacated and to coordinate cleaning services. The amount claimed is reflected in an invoice dated November 17, 2021, charging the amount back to the Tenant. A copy of the invoice was submitted into evidence.

Fourth, the Landlord claims \$25.00 in recovery of an NSF charge incurred in relation to rent due on November 1, 2021. The amount claimed is reflected in an invoice dated November 5, 2021, charging the amount back to the Tenant. A copy of the invoice was submitted into evidence.

Fifth, the Landlord claims \$25.00 as an administrative fee in relation to late rent due on November 1, 2021. SP referred to section 2.3 of the tenancy agreement which provides for such a fee. The amount claimed is reflected in an invoice dated November 5, 2021, charging the amount back to the Tenant. A copy of the invoice was submitted into evidence.

Sixth, the Landlord claims \$75.00 for a parking fee due on November 1, 2021. This cost is reflected in a Tenant Ledger submitted into evidence which shows this amount as a monthly payment. The amount claimed is also reflected in an invoice dated November 1, 2021, charging the amount back to the Tenant. A copy of the invoice was submitted into evidence.

Seventh, the Landlord claims \$100.00 for a storage fee due in November 2021. This cost is reflected in a Tenant Ledger submitted into evidence which shows this amount as a monthly payment. The amount claimed is also reflected in an invoice dated November 1, 2021, charging the amount back to the Tenant. A copy of the invoice was submitted into evidence.

Finally, the Landlord claims \$100.00 in recovery of the filing fee paid to make the application and requests that the security deposit be retained in partial satisfaction of the Landlord's claims.

The Tenant did not attend the hearing to dispute the Landlord's evidence.

### Analysis

Based on the unchallenged and affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the Act empowers the director 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. 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 because 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.

With respect to the Landlord's claim for \$336.00 for the cost of cleaning the rental unit at the end of the tenancy, I find the Landlord is entitled to a monetary award for the amount claimed. This aspect of the claim was supported by a move-out inspection and an invoice for cleaning services.

With respect to the Landlord's claim for \$500.00 as liquidated damages, Policy Guideline #4 states:

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. Further, if the clause is a penalty, it still functions as an upper limit on the damages payable resulting from the breach even though the actual damages may have exceeded the amount set out in the clause.

A clause which provides for the automatic forfeiture of the security deposit in the event of a breach will be held to be a penalty clause and not liquidated damages unless it can be shown that it is a genuine pre-estimate of loss.

If a liquidated damages clause is struck down as being a penalty clause, it will still act as an upper limit on the amount that can be claimed for the damages it was intended to cover.

A clause in a tenancy agreement providing for the payment by the tenant of a late payment fee will be a penalty if the amount charged is not in proportion to the costs the landlord would incur as a result of the late payment.

In this case, I find the Tenant breached the tenancy agreement by moving out of the rental unit before the end of the fixed term. I also find the amount of liquidated damages – one half of one month's rent – is reasonable and is not a penalty. As a result, the Landlord is granted a monetary award of \$500.00 for liquidated damages.

With respect to the Landlord's claim for \$31.49 for the cost of a handyman, I find there is insufficient evidence before me to grant the relief sought. The duties described by SP are part of the daily responsibilities of landlords generally and I find the amount is not recoverable.

With respect to the Landlord's claim for \$25.00 relating to NSF charges, section 7 of the Residential Tenancy Regulation provides that a landlord may recover service fees charged by a financial institution to the landlord for the return of a tenant's cheque. In this case, I find the Landlord incurred the NSF charge and is entitled to recover \$25.00 from the Tenant.

With respect to the Landlord's claim for \$25.00 as an administrative fee relating to the late payment of rent in November 2021, section 7 of the Residential Tenancy Regulation provides an administration fee of not more than \$25.00 for the late payment of rent if the tenancy agreement provides for the fee. In this case, I find the Tenant did not pay rent on time on November 1, 2021, and that the tenancy agreement provides for an administrative fee for late payment of rent. The Landlord is granted a monetary award of \$25.00.

With respect to the Landlord's claim for \$75.00 for a parking fee due in November 2021, I find the Tenant owed this amount, which is reflected in the Tenant Ledger as a repeating monthly charge. I accept that it was not paid in November 2021. Therefore, the Landlord is granted a monetary award of \$75.00.

With respect to the Landlord's claim for \$100.00 for a storage fee due in November 2021. I find this amount was owed by the Tenant and is reflected in the Tenant Ledger as a repeating monthly charge. I accept that it was not paid in November 2021. Therefore, the Landlord is granted a monetary award of \$100.00.

Having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. I also order that the Landlord is entitled to retain the security deposit 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 \$661.00, which has been calculated as follows:

<b>Claim</b>	<b>Allowed</b>
Cleaning services:	\$336.00
Liquidated damages:	\$500.00
Handyman charges:	\$0
NSF charge:	\$25.00
Administrative fee:	\$25.00
Parking:	\$75.00
Storage:	\$100.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$500.00)
<b>TOTAL:</b>	<b>\$661.00</b>

Conclusion

The Landlord is granted a monetary order in the amount of \$661.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (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: July 18, 2022

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Residential Tenancy Branch