



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0974871 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, FFL

### Introduction

This hearing was scheduled to convene at 1:30 p.m. on August 4, 2022 concerning an application made by the landlord seeking a monetary order for unpaid rent or utilities, an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant joined the call.

The landlord's agent testified that the tenant was served with the Notice of Dispute Resolution Proceeding and required documents (the Hearing Package) by registered mail on January 21, 2022 to a forwarding address provided to the landlord by the tenant. The landlord's agent was permitted to provide evidence of that after the hearing had concluded. I now have a Canada Post cash register receipt bearing that date as well as a Registered Domestic Customer Receipt addressed to the tenant, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence of the landlord has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent?

- Should the landlord be permitted to keep the security deposit in partial satisfaction of the claim?

### Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on April 15, 2021 and was to revert to a month-to-month tenancy after April 30, 2022. Rent in the amount of \$1,460.00 was payable on the 1<sup>st</sup> day of each month. On March 29, 2021 the landlord collected a security deposit from the tenant in the amount of \$730.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex containing 26 floors and around 300 suites. A copy of the tenancy agreement has been provided as evidence for this hearing.

The tenant paid rent for the month of December, 2021, however the payment was returned for non-sufficient funds on December 9, 2021 and was not replaced by the tenant.

The landlord's agent further testified that the tenant gave notice to end the tenancy effective December 31, 2021, which is a breach of the fixed term. The tenancy agreement contains a liquidated damages clause stating that if the tenant breaches the agreement or vacates prior to the end of any fixed term, the tenant will pay to the landlord the sum of \$400.00, and not as a penalty.

The parties completed a move-in and a move-out condition inspection report, provided for this hearing. The move-out portion was completed on December 31, 2021 and the tenant provided a forwarding address on the form.

The landlord seeks monetary compensation of \$1,460.00 for December, 2021 rent; liquidated damages of \$400.00; recovery of the \$100.00 filing fee; and an order permitting the landlord to keep the \$730.00 security deposit.

### Analysis

I have reviewed the tenancy agreement, and I accept the undisputed testimony of the landlord's agent that the tenant vacated the rental unit prior to the end of the fixed term, and that liquidated damages in the amount of \$400.00 applies.

I also accept the undisputed testimony of the landlord's agent that the tenant's rent payment for December, 2021 in the amount of \$1,460.00 was returned for non-sufficient

funds and was not replaced by the tenant. Therefore, I find that the landlord is entitled to recover the rent for that month.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

A landlord is required to return a security deposit to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application claiming against the deposit within that 15 day period. In this case, the tenant vacated the rental unit on December 31, 2021 and provided a forwarding address in writing the same day. The landlord filed the Application for Dispute Resolution on January 10, 2022 which is within the 15 day period.

Having found that the tenant is indebted to the landlord \$1,460.00 for December's rent and \$400.00 for liquidated damages, and recovery of the \$100.00 filing fee, I order that the landlord keep the \$730.00 security deposit in partial satisfaction and I grant a monetary order in favour of the landlord for the difference, in the amount of \$1,230.00. ( $\$1,460.00 + \$400.00 + \$100.00 = \$1,960.00 - \$730.00 = \$1,230.00$ ).

### Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$730.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,230.00.

This order is final and binding and may be enforced.

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: August 04, 2022

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Residential Tenancy Branch