



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WEST FRASER HOLDINGS  
LTD and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCL-S

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for loss under the Act, Residential Tenancy Regulation (the regulation) or tenancy agreement, pursuant to section 67; and
- an authorization to retain the security deposit (the deposit), under section 38.

I left the teleconference connection open until 2:00 P.M. to enable the tenants to call into this teleconference hearing scheduled for 1:30 P.M. The tenants did not attend the hearing. The landlord, represented by agent JB (the landlord), attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed she understands the parties are not allowed 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 \$5,000.00."

I accept the landlord's testimony that the tenants were served with the application and evidence (the materials) by registered mail on January 14, 2022, in accordance with section 89(1)(d) of the Act. The landlord mailed the packages to the forwarding address. The tracking numbers and the forwarding address are recorded on the cover of this decision.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenants are deemed to have received the materials on January 19, 2022, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Preliminary Issue – landlord's claims

The landlord affirmed she is claiming compensation in the amount of \$575.00 for a processing fee, \$528.00 for loss of rental income and \$222.00 for expenses to re-rent the rental unit.

The application states:

Aug 9,2021 inquired about 3 bdrm suite. Needed to move by Sept 1st,2021.Aug 23,2021 - advised unit available for a move in Sept 30,2021.Arranged showing for 11am Sept 7,2021. Tenant very anxious to get the unit sends deposit of \$1325 on Sept 7. Wants to send deposit before documents are completed. Sept 8,2021 application approved. Set another family showing Sept 9,2021-11:15.Signed documents received on Sept 10,2021. Sept 14,advises employer cut his hours. Has to move. Wants to cancel Agreement.

The landlord stated that she served the written submission with the application. The landlord's written submission states:

The suite was taken off the market from September 10,2021. To re-rent the suite, it was shown 6 times, with a acceptable tenant approved on October 4th,2021 for a move in date of October 6,2021.

Rental Rate \$2650 per month – daily rate \$88 per day. – Processing fee of \$575 for cancellation of lease agreement. Further advertising & viewing expenses incurred.

It is clear that this was a firm contract with funds paid. The tenant was anxious to find the place, we were able to set up 2 viewings for his family to ensure that this was suite they wanted. This is clear from the e transfer of \$1325 that was received on Sept 7,2021 that they wanted the suite.

The \$1325 is forfeited & the lease agreement was cancelled as requested.

The landlord submitted a monetary order worksheet into evidence. It states: "e-transfer of deposit funds / \$1,325.00."

Based on the landlord's written submission, I find the landlord clearly indicated that the landlord is claiming \$575.00 for the processing fee and \$528.00 for loss of rental

income. I find the landlord did not indicate there is a claim in the amount of \$222.00 for expenses to re-rent.

Section 59(2)(b) of the Act states the application must: “include full particulars of the dispute that is to be the subject of the dispute resolution proceedings.”

Section 62(4)(c) of the Act states that: “the director may dismiss all or part of an application for dispute resolution if the application or part does not disclose a dispute that may be determined.”

I dismiss the landlord’s claim for \$222.00, as the landlord did not indicate this claim in the application.

### Issues to be Decided

Is the landlord entitled to:

1. a monetary order for loss?
2. an authorization to retain the deposit?

### Background and Evidence

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

The landlord testified the landlord and the tenants (the parties) signed the tenancy agreement on September 09, 2021 for a fixed-term tenancy starting on October 01, 2021 and ending on September 30, 2022. The parties agreed to a monthly rent in the amount of \$2,650.00 due on the first day of the month. The landlord collected and holds a deposit in the amount of \$1,325.00.

The landlord said the rental agreement is the standard Residential Tenancy Branch form 1. The parties did not sign an addendum. The landlord submitted into evidence the tenants’ authorization for pre-authorized debt payments for the rental payment.

The landlord affirmed that the tenants emailed the landlord on September 13, 2021: “Hi, now my boss give me only 3 days shift a week. Also my EI stopped. So, I can’t afford

this rent anymore. I can't pay the rent with this income. Please forgive me and cancel our contract."

The landlord informed the tenants on September 17, 2021 that the landlord accept the tenants' request to cancel the tenancy agreement. The landlord started advertising the rental unit immediately and was able to re-rent it on October 04 for a tenancy starting on October 06, 2021. The landlord re-rented the rental unit for \$2,650.00 per month.

The landlord received a letter with the tenants' forwarding address on December 17, 2021 and submitted this application on December 30, 2021, as the tenants did not authorize the landlord to retain the deposit.

The landlord applied to retain all the deposit because of losses due to the tenants' breach of the tenancy agreement.

The landlord is claiming compensation in the amount of \$575.00 because the tenants ended the tenancy agreement early. The landlord had to cancel the automatic debt payment and incurred extra accounting and administrative work. The landlord answered several phone calls because the rental unit was listed for a second time.

The landlord incurred a loss of rental income in the amount of \$528.00, as the daily rent is \$88.00, and the new tenancy agreement only started on October 06, 2021.

### 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 (RTB) 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.

RTB Rule of procedure 6.6 states that 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.

Section 16 of the Act states that: “The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.”

#### Processing fee

Based on the landlord’s convincing testimony, I find the landlord proved, on a balance of probabilities, that she suffered a loss in the amount of \$575.00 because the tenants breached the tenancy agreement by cancelling the tenancy agreement four days after they signed it.

As such, I award the landlord the amount of \$575.00.

#### Loss of rental income

Based on the landlord’s convincing testimony, I find the tenants were aware the tenancy was for a fixed term from October 01, 2021 to September 30, 2022 and the tenants ended the tenancy early on September 17, 2021, 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**

(c) is 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.

(3) If a 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 tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(emphasis added)

I find that due to the tenant's failure to pay rent until the end of the fixed term tenancy agreement on September 30, 2022, the landlord incurred a loss of rental income from October 01 to 06, 2021 in the amount of \$528.00.

RTB Policy Guideline 3 sets conditions for loss of rental income claims. It states:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy.

[...]

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.

Further to that, RTB Policy Guideline 5 states:

When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to:

1. re-rent the rental unit at a rent that is reasonable for the unit or site; and
2. re-rent the unit as soon as possible.

For example, if on September 30, a tenant gives notice to a landlord they are ending a fixed term tenancy agreement early due to unforeseen circumstances (such as taking a new job out of town) and will be vacating the rental unit on October 31, it would be reasonable to expect the landlord to try and rent the rental unit for the month of November. Reasonable effort may include advertising the rental unit for rent at a rent that the market will bear.

If the landlord waited until April to try and rent the rental unit out because that is when seasonal demand for rental housing peaks and higher rent or better terms can be secured, a claim for lost rent for the period of November to April may be reduced or denied.

Based on the landlord's uncontested testimony, I find the landlord acted to minimize her losses by advertising the rental unit.

Thus, I award the landlord loss of rental income compensation in the amount of \$528.00

Summary and deposit

The landlord is entitled to:

Processing fee	\$575.00
Loss of rental income	\$528.00
<b>Total</b>	<b>\$1,103.00</b>

Residential Tenancy Branch Policy Guideline 17 states:

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.

As such, the landlord is authorized to retain the amount of \$1,103.00 from the deposit to offset the monetary award for losses incurred due to the tenants' non-compliance with the Act.

As the landlord confirmed receipt of the tenants' forwarding address, the landlord must return the balance of the deposit in the amount of \$222.00.

In summary:

Landlord's monetary compensation	\$1,103.00
Deposit	\$1,325.00
<b>Tenant's monetary award</b>	<b>\$222.00</b>

Conclusion

Pursuant to sections 38, 67 and 72 of the Act, I authorize the landlord to retain \$1,103.00 from the deposit in total satisfaction of the losses incurred and grant the tenants a monetary award pursuant to sections 38 and 67 of the Act in the amount of \$222.00.

The tenants are provided with this order in the above terms and the landlord must be served with this order as soon as possible. Should the landlord 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: August 09, 2022

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Residential Tenancy Branch