



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **RPP, MNDCT, FFT**

### **Introduction**

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on May 6, 2022 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order granting the return of personal property;
- a monetary order for damage or compensation; and
- an order granting recovery of the filing fee.

The Tenants and the Landlord's Agent attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence package. As there were no issues raised, I find these documents were sufficiently served pursuant to Section 71 of the *Act*.

### **Preliminary Matters**

At the start of the hearing, the Tenants clarified that they did not intend on submitting a claim for the return of their personal property. As such, the Tenants elected to withdraw this claim. The hearing continued based on the Tenants' claim for monetary compensation.

The Parties were given an 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 Residential Tenancy Branch Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to a monetary order for compensation, pursuant to Section 67 of the *Act*?
2. Are the Tenants entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties agreed to the following; the parties signed the fixed term tenancy agreement on April 30, 2022. The tenancy was meant to begin on May 1, 2022. Rent in the amount of \$1,500.00 would have been due to the Landlord by the first day of each month, as well as a security deposit in the amount of \$750.00 was required by the Landlord. A tenancy agreement between the parties was submitted by the Tenants in support.

The Tenants stated that after signing the tenancy agreement, they sent the Landlord their security deposit from a bank account from the United States on April 30, 2022. The Tenants stated that the Landlord claimed that they did not receive the transfer. As such, the Tenants sent the first month of rent and re-sent the security deposit to the Landlord on May 1, 2022 from a Canadian bank account.

The Tenants stated that the Landlord refused to accept the e-transfers and did not provide them with keys, or access to the rental unit. The Tenants stated that after many attempts at trying to reach the Landlords, the Landlord's Agent replied by stating that their lease was terminated. The Tenants stated that they were left homeless, as such, secured a short-term rental for the month of May 2022, while they found a permanent residence.

The Tenants are claiming \$3,127.00 which was the cost of the short-term rental from May 1 – 30, 2022 after the conversion rate to Canadian dollars. The Tenants provided a short term rental payment receipt in support. If successful, the Tenants are also seeking the return of the filing fee paid to make the Application.

The Landlord's Agent responded by stating that the lease was automatically terminated based on the fact that the Tenants failed to pay the security deposit in full before April 30, 2022. The Landlord's Agent also noted some inconsistencies in the Tenants' rental application. As such, the Landlord felt entitled to terminate the lease.

### Analysis

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

In relation to the monetary compensation sought by the Tenants, Section 67 of the *Act* empowers me 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*. Pursuant to Residential Tenancy Policy Guideline #16 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 as a result 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 Tenants 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 Landlords. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

### **Start of rights and obligations under tenancy agreement**

**16** 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.

## How a tenancy ends

- 44** (1) A tenancy ends only if one or more of the following applies:
- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
    - (i) section 45 [*tenant's notice*];
    - (i.1) section 45.1 [*tenant's notice: family violence or long-term care*];
    - (ii) section 46 [*landlord's notice: non-payment of rent*];
    - (iii) section 47 [*landlord's notice: cause*];
    - (iv) section 48 [*landlord's notice: end of employment*];
    - (v) section 49 [*landlord's notice: landlord's use of property*];
    - (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
    - (vii) section 50 [*tenant may end tenancy early*];
  - (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
  - (c) the landlord and tenant agree in writing to end the tenancy;
  - (d) the tenant vacates or abandons the rental unit;
  - (e) the tenancy agreement is frustrated;
  - (f) the director orders that the tenancy is ended;
  - (g) the tenancy agreement is a sublease agreement.

## Landlord's notice: cause

- 47** (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
- (a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;**
  - (b) the tenant is repeatedly late paying rent;
  - (c) there are an unreasonable number of occupants in a rental unit;

(d)the tenant or a person permitted on the residential property by the tenant has

(i)significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii)seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii)put the landlord's property at significant risk;

(e)the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i)has caused or is likely to cause damage to the landlord's property,

(ii)has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii)has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(f)the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

(g)the tenant does not repair damage to the rental unit or other residential property, as required under section 32

(3) *[obligations to repair and maintain]*, within a reasonable time;

(h)the tenant

(i)has failed to comply with a material term, and

(ii)has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

(i)the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 *[assignment and subletting]*;

(j)the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;

(k)the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;

(l)the tenant has not complied with an order of the director within 30 days of the later of the following dates:

(i)the date the tenant receives the order;

(ii)the date specified in the order for the tenant to comply with the order.

In this case, I accept that the parties entered into a tenancy agreement on April 30, 2022. I find that the Landlord was not permitted to terminate the lease. The Landlord was required to serve the Tenant with a proper One Month Notice to End Tenancy should they feel as though they had sufficient cause to end the tenancy. As the Landlord did not provide the Tenants access to the rental unit, I find that the Tenants had no alternative than to find a short-term accommodation until such a time that they could find a long-term accommodation and suffered a financial loss as a result.

While the Tenants are claiming for the full cost of their short-term rental in the amount of \$3,127.00, I find that the Tenants would have been required to pay rent in the amount of \$1,500.00 to the Landlord had they moved into the rental unit. As such, I find that the Tenants are entitled to compensation in the amount of \$3,127.00, less the amount of rent that would have been paid to the landlord for rent (\$3,127.00 - \$1,500.00 = **\$1,627.00**).

Having been successful, I find the Tenants are entitled to recover the **\$100.00** filing fee paid to make the Application. Pursuant to section 67 of the *Act*, I find the Tenants are entitled to a monetary order in the amount of \$1,727.00.

### Conclusion

The Landlords were not permitted to terminate the lease. The Tenants are granted a monetary order in the amount of \$1,727.00. The order should be served to the Landlords as soon as possible and may be filed in and enforced as an order of the Provincial Court of BC (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: September 12, 2022