



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS  
LTD and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, MNDCL-S, FFL

### 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 unpaid rent, pursuant to section 26;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the security deposit (the deposit), under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 1:50 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 MV (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 all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

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."

### Preliminary Issue – Service

The landlord affirmed the tenant submitted a rental application on February 18, 2022 indicating the tenants' address ("the CL address", recorded on the cover page). On the same day the tenants signed the tenancy agreement for a tenancy starting on March 01, 2022.

The tenants emailed the landlord on February 23, 2022:

This is [tenants]. We let you know that we aren't available to rent the apartment because we have family problems. We really apologies for the inconveniences. Since my wife chances job, is going to be so far for her and she doesn't drive. We wondering if we can get back the deposit at list 50%, we really going to appreciate it. Again we are really sorry that we cannot rent the apartment, we hope you understand.  
Thank you!

The landlord served the notice of hearing and the evidence (the materials) to the tenants via registered mail (the tracking numbers are recorded on the cover page of this decision) on March 10, 2022. The landlord mailed the packages to the CL address.

Section 89(1) of the Act states:

- (1)An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
- (a)by leaving a copy with the person;
  - (b)if the person is a landlord, by leaving a copy with an agent of the landlord;
  - (c)by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
  - (d)if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
  - (e)as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];
  - (f)by any other means of service provided for in the regulations.

RTB Policy Guideline 12 states:

The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.

[...]

The respondent's address may be found on the tenancy agreement, in a notice of

forwarding address, in any change of address document or in an application for dispute resolution.

Based on the landlord's undisputed convincing testimony, the rental application and the February 23, 2022 email, I find the tenants informed their address is the CL address on February 18, 2022 and that on February 23, 2022 the tenants informed the landlord that they would not move to the rental unit. As the tenants did not move to the rental unit, I find that the tenants' address for service continued to be the CL address.

I accept the landlord's testimony that the tenants were served with the materials by registered mail on March 10, 2022, in accordance with section 89(1)(c) of the Act.

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 March 15, 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 respondents.

### Preliminary Issue – Claims

The application states:

01 - I want to recover the money for the unpaid rent - holding security or pet deposit  
\$1,650.00

Applicant's dispute description  
March rent. Unit is still available.

02 - I want compensation for my monetary loss or other money owed - holding security  
or pet deposit  
\$825.00

Applicant's dispute description  
the lease was terminated before the end of the original term ( Paragraph 4 of the  
Residential Tenancy Agreement)

The landlord affirmed she is seeking a monetary order for the loss of rental income, an authorization to retain the deposit and to recover the filing fee.

### Issues to be Decided

Is the landlord entitled to:

1. a monetary order for loss?

2. an authorization to retain the deposit?
3. an authorization to recover the filing fee?

### 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 affirmed the monthly rent is \$1,650.00, due on the first day of the month. The landlord collected and currently holds in trust the deposit in the amount of \$825.00. The tenancy agreement was submitted into evidence. It indicates the fixed-term tenancy was from March 01, 2022 to August 31, 2022.

The landlord started advertising the rental unit online on February 23, 2022, asking for monthly rent in the amount of \$1,650.00. The landlord was able to re-rent the rental unit for \$1,650.00 monthly on April 01, 2022.

### 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.

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. The onus to prove their case is on the person making the claim.

#### Loss of rental income

Based on the landlord's undisputed convincing testimony, the tenancy agreement and the email dated February 23, 2022, I find the tenants signed the tenancy agreement on February 18, 2022 for a fixed-term tenancy from March 01 to August 31, 2022 and that monthly rent was \$1,650.00.

Section 16 of the Act states:

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.

I accept the landlord's undisputed convincing testimony that the tenants informed the landlord on February 23, 2022 that they would not move to the rental unit.

I find that due to the tenants' failure to pay rent until the end of the fixed term tenancy agreement on August 31, 2022, the landlord incurred a loss of rental income from March 01 to 31, 2022 in the amount of \$1,650.00.

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, 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 his losses by starting to advertise the rental unit on the day the tenants informed her that they would not move to the rental unit.

Thus, per section 67 of the Act and considering RTB Policy Guidelines 3, 5 and 16, I award the landlord loss of rental income from March 01 to 31, 2022 in the total amount of \$1,650.00.

#### Filing fee and summary

As the landlord was successful in this application, I find the landlord is entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, 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. Thus, I order the landlord to retain the tenants' deposit of \$825.00 in partial satisfaction of the monetary award granted.

In summary:

Item	\$
Loss of rental income	1,650.00
Filing fee	100.00
Subtotal	1,750.00
Minus deposit	825.00
<b>Total</b>	<b>925.00</b>

### Conclusion

Pursuant to sections 38, 67 and 72 of the Act, I authorize the landlord to retain the \$825.00 deposit and grant the landlord a monetary order in the amount of \$925.00.

The landlord is provided with this order in the above terms and the tenants must be served with this order in accordance with the Act. Should the tenants 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: October 28, 2022

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Residential Tenancy Branch