



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LAKE OKANAGAN RESORT  
LTD. and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

### Issue to be Decided

Is the landlord entitled to a monetary award for losses arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

### Background, Evidence

CC testified that this tenancy began on June 1, 2022 for a fixed term of one year to end on May 31, 2023. Monthly rent in the amount of \$1,750.00 was payable on the first day of each month. A security deposit of \$875.00 was paid by the tenant and the landlord continues to retain this deposit. The landlord provided a copy of the written tenancy agreement with its Application. CC testified that the tenant advised her on September 6, 2022 that he had already moved out. CC testified that the tenant did not provide any notice. CC testified that the landlord is seeking the loss of rent for the balance of the term as this unit is located in a resort area and that rentals are very slow during the winter. CC testified that the landlord is seeking the liquidated damages as noted in the tenancy agreement and the recovery of the filing fee for this application.

The landlord is applying for the following:

1.	Loss of Rent September 2022-May 2023	\$15,750.00
2.	Liquidated Damages	875.00
3.	Filing Fee	100.00
4.	Less Deposit	-875.00
	Total	<b>\$15,850.00</b>

SJ testified that her son had to move as he obtained employment in Alberta. SJ testified that her son had no choice but to move. SJ testified that she understands there may be some costs, but her son was under the impression that he would only lose his deposit and pay one months rent.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the landlord and witness LL, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings around each are set out below.

### Loss of Rent

I find that the landlord and tenant entered into a fixed term tenancy for the period from June 1, 2022 to May 31, 2023.

Subsection 45(2) of the *Act* sets out how a tenant may end a fixed term tenancy:

*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.*

The above provision states that the tenant cannot give notice to end the tenancy before the end of the fixed term. If the tenant does, he could be liable for a loss of rent during the period when the unit cannot be re-rented. In this case, the tenant vacated the rental unit on September 6, 2022, before the completion of the fixed term on May 31, 2023. As such, the landlord is entitled to compensation for losses it incurred as a result of the tenant's failure to comply with the terms of his tenancy agreement and the *Act*.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the *Regulation* or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable, to re-rent the premises soon after receiving notice from the tenant that he had moved out. The landlord posted an online rental advertisement immediately on five different website platforms. The landlord made efforts to re-post and renew the advertisements to preserve priority on the website. I accept the landlord's evidence that this is a slow rental period, particularly during the autumn-winter months, and that the landlord has not received many inquiries. Although the landlord did not reduce the rental price or the fixed length term, the landlord explained the positive features of this unit to justify the price as well as the security of the fixed term lease. As such, I am satisfied that the landlord discharged its duty under section 7(2) of the *Act* to minimize its losses.

The landlord seeks three months of rental loss for September 2022 to November 2022, the period during which the property could not be re-rented due to the tenant's breach. The liquidated damages clause of the tenancy agreement addendum states that the landlord is not precluded from claiming a loss of rental income if liquidated damages are paid by the tenant. Accordingly, I find that the landlord is entitled to \$5,250.00 for a loss of rent from the tenant. The landlord asked if I could consider the entire length of the tenancy in calculating the loss. However, it is premature for me to consider possible

future losses. At the end of the hearing the agent asked if the matter could be adjourned until June 2023 to ascertain the exact amount of their losses.

Residential Tenancy Branch Rules of Procedure addresses adjournments as follows:

#### 7.9 Criteria for granting an adjournment

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party

None of the grounds for adjournment apply to the matter before me today, and therefore an adjournment was not granted. It was explained to the landlord's agent that the landlord is premature in asking for future losses but that they are at liberty to file another application if they do incur further losses. The agent indicated that she understood.

#### Liquidated Damages

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 this case, the liquidated damages clause is intended to compensate the landlord for losses resulting from the costs of re-renting the rental unit after the tenant's breach. The cost of re-renting a unit to new tenants is part of the ordinary business of a landlord. Throughout the lifetime of a rental property, a landlord must engage in the process of re-renting to new tenants' numerous times. However, one important reason why a landlord enters into a fixed-term tenancy agreement is to attempt to limit the number of times the landlord must incur the costs of re-renting.

I find it more likely than not that, when a tenant breaches a fixed term tenancy agreement resulting in an early end to the tenancy, the landlord incurs the costs of re-renting earlier than it would have without the breach. This exposes the landlord to extra costs of re-rental. For that reason, I find there is a loss to the landlord associated with the tenant's breach. The next question is whether the \$875.00 amount specified in the tenancy agreement addendum is a genuine pre-estimate of that loss.

The landlord stated that the liquidated damages of \$875.00 are to cover administrative costs to list the rental unit online, show the rental unit to potential tenants, and collect and forward applications to the landlord for reference and credit checks. I find that this amount is a genuine pre-estimate of the loss. The tenant breached the fixed term tenancy agreement and specifically initialled beside the liquidated damages provision in the addendum, stating that he is responsible for this cost. Accordingly, I find that the landlord is entitled to \$875.00 for liquidated damages from the tenant.

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

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$5,350.00 against the tenant as follows:

Item	Amount
Loss of September 2022 Rent	\$1,750.00
Loss of October 2022 Rent	1,750.00
Loss of November 2022 Rent	1,750.00
Liquidated Damages	875.00
Filing Fee	100.00
Less Security Deposit	-875.00
<b>Total Monetary Award</b>	<b>\$5,350.00</b>

The landlord is provided with a monetary order in the amount of \$5,350.00 in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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: November 08, 2022

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Residential Tenancy Branch