



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

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A matter regarding MAINLINE LIVING PROPERTY  
MANAGEMENT and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, MNDCL-S, FFL

### Introduction

The landlord seeks compensation from its former tenant for unpaid rent, for liquidated damages, and for the cost of the application filing fee, pursuant to sections 26, 67, and 72, respectively, of the *Residential Tenancy Act* (the “Act”).

### Attendance at Hearing and Service of Notice of Dispute Resolution Proceeding

A dispute resolution hearing was held by teleconference on Thursday, February 9, 2023 at 1:30 PM. Only the landlord’s representative (hereafter the “landlord”) attended the hearing, which ended at 1:40 PM. The tenant did not attend the hearing.

The landlord testified under oath that they served a copy of the *Notice of Dispute Resolution Proceeding* and their documentary evidence upon the tenant by way of pre-agreed email for service of documents on June 10, 2022. A copy of the tenancy agreement which included the tenant’s consent to use a specific email for service of documents was in evidence, as was a copy of the email sent on June 10, 2022. Based on this undisputed, affirmed, and corroborated evidence of service, it is my finding that the tenant was served in accordance with the Act and Rules of Procedure.

### Issues

Is the landlord entitled to compensation?

### Background and Evidence

The tenancy began on April 1, 2022 and ended on May 31, 2022. The tenant entered into a fixed-term tenancy but ended it early by way of a Mutual Agreement to End Tenancy (“MAET”). A copy of the MAET was in evidence and is signed by both parties.

Monthly rent was \$1,590.00 and the tenant paid a security deposit of \$795.00. The security deposit is currently held in trust pending the outcome of this application.

It should be noted that the tenant never moved into or occupied the rental unit. However, she paid rent for April but did not pay any rent for May, despite being in a tenancy agreement which required her to pay rent. The landlord seeks compensation in the amount of \$1,590.00 for the unpaid rent for May 2022.

In addition, the landlord seeks \$200.00 in compensation pursuant to a liquidated damages clause. This clause appears on page two of the tenancy agreement.

### Analysis

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.

### **Claim for Unpaid Rent**

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some of the rent. There is no evidence before me to conclude that the tenant had a legal right not to pay rent for May 2022. The tenant had a contract—that is, the written tenancy agreement that she signed—to pay rent to the landlord in exchange for a rental unit. That the tenant chose not to occupy the rental unit does not void the contract, and the tenant had an obligation to pay rent as required by the tenancy agreement. (See also section 16 of the Act.)

Taking into consideration all of the evidence before me, it is my finding that the landlord has proven their claim for unpaid rent for May 2022 in the amount of \$1,590.00.

### **Claim for Liquidated Damages**

The tenancy agreement in this dispute contained a liquidated damages clause. Such a term requires a tenant to pay an amount when the tenant breaches a material term of the tenancy agreement, including ending the tenancy before it is set to expire. However, in this dispute, both parties agreed by way of the MAET document to end the tenancy effective May 31, 2022. As such, because the landlord agreed in writing to the tenancy ending on May 31 (and hence before March 31, 2023) it cannot follow that the tenant can be found to have breached a material term of the tenancy agreement.

Thus, in taking into consideration all the evidence before me, it is my finding that the landlord has not proven their claim for compensation for liquidated damages. This aspect of the landlord's application must be dismissed.

### **Claim for Application Filing Fee**

Under section 72 of the Act, an arbitrator can order one party to pay a fee to another party in a dispute resolution proceeding. Typically, when an applicant is successful in their application, the respondent is ordered to pay an amount equal to the applicant's filing fee. In this case, since the landlord was successful, the tenant is ordered to pay the landlord \$100.00.

### **Summary**

The landlord is awarded a total of \$1,690.00. Pursuant to section 38(4)(b) of the Act the landlord is authorized to retain the tenant's \$795.00 security deposit in partial satisfaction of the amount awarded.

The balance owing (\$895.00) is granted by way of a monetary order to the landlord. The landlord must serve a copy of the monetary order upon the tenant and the tenant is required to pay \$895.00 to the landlord within 15 days of receiving a copy of this decision or the monetary order. If necessary, the landlord may enforce the monetary order in the Provincial Court of British Columbia.

### **Conclusion**

The application is granted.

This decision and order, except where otherwise provided for under the Act, are final and binding, and are made on delegated authority under section 9.1(1) of the Act.

Dated: February 9, 2023

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Residential Tenancy Branch