



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      For the Landlords: MNRL, FFL  
                                 For the Tenant: MNSDB-DR, FFT

### **Introduction**

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy.

The Landlords' application pursuant to the Act is for:

- a monetary order for unpaid rent, pursuant to section 26;
- an authorization to recover the filing fee, under section 72.

The Tenant's application pursuant to the Act is for:

- an order for the landlord to return the security and pet damage deposits (the deposits), pursuant to section 38; and
- an authorization to recover the filing fee, under section 72.

Landlord BM (the Landlord) and tenant EA (the Tenant) attended the hearing. The Landlord represented landlord SM. Both parties had a full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

The parties each confirmed receipt of the notices of dispute resolution proceeding and the evidence (the materials).

Based on the testimonies I find that each party served the materials in accordance with section 89 of the Act.

### **Preliminary Issue – Rental Unit's Address**

Both parties agreed the rental unit's address is the one listed on the cover page of this decision.

Pursuant to section 64(3)(a) of the Act, I have amended the landlord's application to list the corrected unit's address.

Issues to be Decided

The Landlords' application, submitted on September 12, 2023, states:

01 - I want to recover the money for the unpaid rent and/or utilities \$10,718.75.

Applicant's dispute description

Tenant moved out prior to end of lease knowing that what he was doing went against that. Looking to have the lost month's rent covered from Feb1 2023 to May 15, 2023.

We were able to get a new tenant in for May 18th 2023. Looking to have the placement costs covered as well for hiring [realtor] to find tenants.

The Landlords submitted a monetary order worksheet dated September 12, 2023 indicating they are seeking loss of rental income from February 1 to May 15, 2023 in the monthly amount of \$2,500.00 and compensation for the realtor's cost to replace the tenant, as the Tenant moved out before the end of the fixed-term tenancy and paid rent only until January 31, 2023.

The Landlords submitted on January 3, 2024 an undated monetary order worksheet indicating that he is seeking loss of rental income only from March 1 to May 15, 2023, as the Tenant verbally authorized him to retain the deposits for February's 2023 rent.

Both parties agreed the Tenant verbally authorized the Landlord to retain the deposits as compensation for February 2023 rent when the tenancy ended.

The Tenant affirmed that as the Landlords submitted their application for dispute resolution the verbal authorization is rescinded, and the Tenant is now seeking the return of the deposits.

The Landlords are seeking compensation for loss of rental income from February 1, 2023 to May 15.

Based on the Landlord's testimony and the application, I receive the Landlords' application for monetary compensation under section 67 of the Act for loss of rental income.

Section 38(4) of the Act states: "A landlord may retain an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant".

I accept the uncontested testimony that there was no authorization in writing for the Landlord to retain the deposits.

The Landlords reduced the claim to exclude the compensation for February's rent because of the Tenant's verbal authorization for the Landlord to retain the deposits as compensation for February's rent.

I find it is not fair to reduce the Landlords' claim to exclude the month of February because of the Tenant's later unilateral declaration that the verbal authorization for the Landlords to retain the deposits is withdrawn after the Landlords applied for dispute resolution.

Per section 38(4) of the Act, the Tenant had to authorize the Landlord in writing to retain the deposits as compensation for February 2023 rent.

Thus, I accept the Landlords' claim for loss of rental income from February 1 to May 15, 2023 and the realtor's cost to re-rent the unit.

In summary, I will determine if the Landlords are entitled to:

1. a monetary order for loss?
2. an authorization to recover the filing fee?

Is the Tenant entitled to:

1. an order for the return of the deposits?
2. 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 parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the Landlords' and Tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the applicants' obligation to present the evidence to substantiate their application.

Both parties agreed they entered into a fixed-term tenancy from August 1, 2022 to July 31, 2023. Monthly rent of \$2,500.00 was due on the first day of the month. At the outset of the tenancy the Landlords collected a security deposit of \$1,125.00 and a pet deposit

of \$1,125.00. The Landlord currently holds the \$2,500.00 deposits in trust. The parties submitted the tenancy agreement into evidence.

The Tenant moved out on January 29, 2023, prior to the end of the fixed-term tenancy.

The Tenant registered mailed the forwarding address to the Landlords on October 27, 2023. The Landlord confirmed receipt of the forwarding address in writing a few days after the date the Tenant mailed it.

The Tenant is seeking double the deposits, as the Landlords did not return the deposits after the Tenant served the forwarding address in writing.

The Landlord confirmed receipt of the notice to end tenancy on December 6, 2022.

The parties emailed in December 2022:

**Tenant on December 6:** I'm wondering how you feel about letting me out of my lease early, with the understanding that I will do my utmost to help find a new tenant for you, and accommodate showings. Our subjects are not removed yet, so it's not for sure, but I wanted to be as transparent as I could with you, as you've been a great landlord. We would be planning to be moved out by Feb 1st, and can negotiate when to end the lease based on how it goes finding a tenant.

**Tenant on December 11:** Sorry to bug you, we are ready to lift subjects, just wondering if you had a chance to speak with [landlord]. I was thinking I would be willing to pay the difference in rent if you can't get the \$2500 anymore until when my lease would have ended.

**Landlord on December 11:** Hi [tenant] yes sorry we were able to get to talk about it yesterday and we will put it in the market asap this week and see if we can get a renter in for the time your requesting to be out of your lease.

I appreciate your thoughts on topping up the payment but if we aren't able to find someone in time then we will have to unfortunately hold you to the lease until it's either expired or we find a renter. I hope you can understand our reasoning for this, we evaluated the situation to great depth as you've been an excellent tenant, but we do have an obligation to the mortgage and have to ensure we have things covered. We will do everything we can to get a new tenant in as soon as possible.

**Tenant on December 11:** Hey, that is reasonable. No problem.

I think it should be ok to find another tenant, if you want I can put it on the hospital network once you have the add up. FYI, there is a new doctor coming to town in mid may. If either you want to find a short term tenant, or want to wait until she comes I can offer her the place.

**Landlord on December 11:** Hi [tenant] thanks for that but if she's not here till may then we will post it and see if we can find anyone before then, if not for some reason then when she's here that would be a good option.

**Tenant on December 17:** When you have the posting link, can you send it to me? There might be a few people at work interested.

**Landlord on December 17:** Hi yes for sure we have engaged [realtor] again on a placement contact so I will let [realtor] know.

The Landlord stated he decided to hire a realtor to re-rent the unit, as he did so when he first rented the unit.

The Landlord does not know when the realtor listed the rental unit.

The Tenant testified he saw the first listing for the rental unit prior to January 6, 2023 and the realtor only listed it in her website, not on the popular listings website of Facebook and Kijiji. The Tenant said he created a listing on Facebook and Kijiji and linked these listings to the realtor's listing on her website. The Tenant affirmed that several potential tenants responded, and he showed the rental unit to at least 6 potential tenants.

The Landlord stated that he trusted the realtor advertised in the appropriate websites.

The parties emailed in February 2023:

**Tenant on February 9:** It's in both our interest to get it rented ASAP, I hoped that the extra month would help as I felt I could manage without getting my deposits back, but it's been two months now with no luck. I think that indicates there's a problem, and [realtor] has indicated that \$2500 is above market price. Perhaps it needs to be reduced.

**Landlord on February 12:** I see you're trying to do what you believe is the right thing by giving us as much notice as you say (for planning purposes) but the bottom line is you did sign a 1 year rental agreement and are obligated to see that rental term out, plus I'll add we are legally allowed to charge back extra costs associated with re-renting.

This may be stretching you thin until the place is rented (which we really are trying to do) or till the term is over but this was a decision that you made not us to purchase a home while there were so many months left of your agreement.

I want to keep this respectful between us and I'm sorry but we need to hold to that agreement as we should not be the ones stretched out like this due to your decision.

**Tenant on February 12:** [...] Lastly, you have not rented the place despite the 3 months I gave you, you didn't list it for 20 days after I gave notice, and you have not

lowered the price despite your property manager telling you it's above market price. These are not reasonable efforts to rent it.

**Landlord on February 28:** I get the reason you bought a house and really I am happy for you but with everything you're listing above I'm not going to respond too as it's all irrelevant to the situation, fact is you asked us if we would let you out of your lease prior to you signing the papers and we responded informing you we would not until we get a new tenant, and we haven't yet. [realtor] has been trying hard to and as soon as we do we will happily let you out.

The Tenant testified the realtor verbally informed him the Landlords did not want to rent for tenants with children. The Landlord said he accepted tenants with children and that the only reason he did not rent earlier was because the tenants who applied did not have a good credit score. The Tenant affirmed he does not believe the potential tenants did not have a good credit score, as the Landlords did not submit documents to prove this claim.

The Landlords submitted into evidence the listing. It does not mention that children are not accepted.

The Landlord stated he did not reduce the asking price because the Tenant only offered to pay the difference until the end of the fixed-term tenancy on July 31, 2023 and the Landlord would not be able to increase the rent after the end of the fixed-term tenancy for the new tenants.

The Landlord testified he re-rented the unit on May 15, 2023 and received \$1,250.00 for May 15 to 31, 2023 and \$2,500.00 per month since June 2023.

The Tenant said that he was able to rent as a landlord a secondary suite in his new home in less than one month in January 2023 and that his partner was able to rent her previous home in 3 days in December 2022.

The Tenant affirmed the landlords failed to mitigate their losses by not listing in more websites and not reducing the amount of rent. The Tenant stated the Landlords should have found a tenant in a shorter time.

The Landlords are seeking compensation of \$1,968.75, as they paid this amount for the realtor to find a new tenant.

The Tenant testified the Landlords did not need to hire a realtor and the realtor did not help the Landlords to find a new tenant.

## Analysis

Pursuant to Rule of Procedure 6.6, 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 the case is on the person making the claim.

Section 7 of the Act states that if a party does not comply with the Act, the Regulations or the tenancy agreement, the non-complying party must compensate the other party for damage or loss that results and that the who claims compensation must minimize the losses.

Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act or the tenancy agreement is due. It states the applicant has to prove the respondent failed to comply with the Act or the agreement, the applicant suffered a loss resulting from the respondent's non-compliance, and the applicant proves the amount of the loss and reasonably minimized the loss suffered.

## Loss of rental income

I accept the uncontested testimony the parties had a fixed-term tenancy from August 1, 2022 to July 31, 2023, monthly rent of \$2,500.00 was due on the first day of the month, the Landlords received notice to end tenancy on December 6, 2022, the Tenant paid rent until January 31, 2023 and the Landlords re-rented the unit on May 15, 2023 for \$2,500.00 per month.

Based on the undisputed testimony, I find the Landlords suffered a loss of rental income from February 1 to April 30, 2023 in the monthly amount of \$2,500.00 and from May 1 to 15 in the amount of \$1,250.00, as the Tenant terminated the tenancy early on January 29, 2023, contrary to section 45(2)(b) of the Act.

Policy Guideline 3 sets conditions for loss of rental income claims. It states: "Where a tenant vacates or abandons the premises before a tenancy agreement has ended, the tenant must compensate the landlord for the damage or loss that results from their failure to comply with the legislation and tenancy agreement (section 7(1) of the RTA and the MHPTA). This can include the unpaid rent to the date the tenancy agreement ended and the rent the landlord would have been entitled to for the remainder of the term of the tenancy agreement."

Further to that, Policy Guideline 5 provides: “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.”

The Landlords clearly informed the Tenant on December 11, 2022 that the Tenant is responsible for eventual losses of rental income.

The Landlords must prove that they minimized their losses, as explained in policy guideline 5. Based on the Landlord’s vague testimony (“The Landlord does not know when the realtor listed the rental unit”), the Tenant’s testimony (“The Tenant testified he saw the first listing for the rental unit prior to January 6, 2023”), and the email dated December 17, 2022, I find the Landlords started advertising the rental unit after December 17, 2022 and before January 6, 2023. I find the Landlords failed to prove they minimized their losses until January 5, 2023.

As the Landlords received the Tenant’s notice to end tenancy on December 6, 2022 and did not prove that they minimized their losses by advertising until January 5, 2023, I dismiss the Landlords’ claim for loss of rental income in the month of February 2023. The Landlords could have re-rented the unit for February 2023 if the Landlords had listed the unit immediately on December 6, 2022, when they received the Tenant’s notice to end tenancy.

I find it was not reasonable for the Landlords’ agent to list only in her website, as the listing was published by January 5, 2023 and the Landlords could not find a suitable new tenant until May 15.

I find that the fact the Tenant and his partner could rent other rental units as landlords in December 2022 and January 2023 does not prove, on a balance of probabilities, that



the Landlords could have re-rented the Tenant's rental unit in a shorter time, as each rental unit is unique.

I find the Landlord's testimony about potential tenants not having a good credit score convincing. The Tenant did not explain why he does not believe the Landlord's convincing testimony. Based on the Landlord's convincing and affirmed testimony, I find the Landlords proved that potential new tenants did not have a good credit score. I find that screening potential tenants by the credit score is a reasonable measure to select a good tenant.

Based on the Landlord's convincing testimony and the listing, I find the Landlords did not reject tenants with children.

The Tenant offered to pay the Landlords the difference of a lower rent until the end of the fixed-term on July 31, 2023 (email on December 11) and asked the Landlords again on February 9 to re-rent as soon as possible. I find it would not be fair for the Landlords to reduce the amount of rent for the new tenant, as the Landlords would not be able to raise the rent for the new tenant after the end of Tenant's fixed-term tenancy, as this is not an allowed rent increase per section 43 of the Act.

As the Landlords did not sufficiently minimize their losses by advertising in other websites and hiring a new realtor, considering policy guidelines 3 and 5, I find it reasonable to reduce the loss of rental income by:

<b>Period (2023)</b>	<b>% of reduction from the original rent</b>	<b>Amount owed \$</b>
March 1 <sup>st</sup> to 31 <sup>st</sup>	20 (payment of 80%)	2,000.00
April 1 <sup>st</sup> to 30 <sup>th</sup>	30 (payment of 70%)	1,750.00
May 1 <sup>st</sup> to 15 <sup>th</sup>	40 (payment of 60%)	875.00
<b>Total</b>		<b>4,500.00</b>

Thus, I award the Landlords \$4,500.00 loss of rental income from March 1 to May 15, 2023.

### Re-renting expenses

Based on the Landlord's uncontested and convincing testimony, I find the Landlords suffered a loss of \$1,968.75 because the Tenant terminated the tenancy agreement early and the Landlords paid the amount claimed for the realtor to find new tenants.

Landlords are allowed to hire a property manager to re-rent a unit, as the Act does not prohibit this.

If the Tenants had not moved out prior to the end of the fixed-term tenancy, the Landlord would have to bear the full cost of the re-renting expenses, as the Tenants would be allowed to terminate the tenancy at that time.

The Tenants occupied the rental unit for 6 of the 12 months of the fixed-term tenancy (from August 2022 to January 2023). As such, I award the Landlords 50% of the loss claimed.

I award the Landlords \$984.37.

### Deposit

I accept the Tenant's uncontested testimony that he mailed the forwarding address to the Landlords on October 27, 2023. I deem the Landlords received the forwarding address on November 1, 2023, per section 90 (a) of the Act.

The Landlords submitted their application on September 12, 2023. I find the Landlords applied within the timeframe of section 38 of the Act.

Section 72(2)(b) of the Act states: "If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant."

As I awarded the Landlords an amount bigger than the deposits, I authorize the Landlords to retain the deposits.

According to the deposit interest calculator (available at <http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html>), the interest accrued on the deposit is \$ 57.37.

As I authorized the Landlords to retain the deposits with the interest accrued, I dismiss the Tenant's claim for the return of the deposits.

#### Filing fee and summary

I authorize the Landlords to recover the \$100.00 filing fee, as the Landlords were successful.

I dismiss the Tenant's claim to recover the filing fee, as the Tenant was not successful.

In summary:

<b>Expenses</b>	<b>\$</b>
Loss of rental income	4,500.00
Re-renting expenses	984.37
Filing fee	100.00
Subtotal	5,584.37
Minus deposits with interest	2,557.37
<b>Total</b>	<b>3,027.00</b>

#### Conclusion

Pursuant to sections 7, 67 and 72 of the Act, I authorize the Landlords to retain the \$2,557.37 deposits with interest and interest and grant the Landlords a monetary order in the amount of \$3,027.00.

The Landlords are provided with this Order 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 *Act*.

Dated: February 14, 2024

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Residential Tenancy Branch