

DECISION

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Landlord Requested:

- a Monetary Order for unpaid rent under section 67 of the Act
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

The Tenants Requested:

- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit under sections 38 and 67 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

Both parties confirmed receipt of each other's applications and evidentiary materials.

Issue(s) to be Decided

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

Are both parties entitled to the monetary orders requested?

Are the tenants entitled to the return of their security deposit?

Are either of the parties entitled to recover the costs of their filing fees for their applications?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of both applications before me, and my findings around it are set out below.

This fixed term tenancy began on September 28, 2025, and was to end on September 30, 2026. Monthly rent was set at \$1,850.00, payable on the first day of the month. The Landlord holds a security deposit of \$925.00. The tenancy ended on October 1, 2025.

The Landlord filed an application requesting a loss of rent for October 1-15, 2025, plus liquidated damages as the Tenants ended this tenancy on October 1, 2025. The Landlord testified that they had provided the Tenants with the keys to the rental unit on September 23, 2025, and had conducted a move-in inspection with the Tenants.

The Landlord testified that they were able to mitigate their losses by re-renting the unit on October 15, 2025 for the same amount of rent.

The Tenants requested the return of their security deposit, plus compensation for in the amount of \$1,500.00 for losses associated with the move.

The Tenants testified that they had to move out after discovering the mice in the rental unit. The Tenants testified that they had moved in on September 29, 2025, and could not sleep all night due to the sound of the mice. The Tenants immediately notified the Landlord that they could not continue with the tenancy due to health concerns and fear that their furniture would get ruined.

The Tenants argued that the Landlord was aware of the mice issue, but failed to disclose this to the Tenants. The Tenants testified that this was evident by the mice traps. The Tenants testified that they had also spoken to a neighbour, who informed the Tenants that the previous Tenants also moved out because of the mice.

The Landlord responded that they had a contract with a pest control company who regularly serviced the building, as supported by the documents in evidence. The Landlord testified that they had contacted the pest control company immediately after the Tenants had informed the Landlord of the issue with the mice, and that the Tenants moved out before giving the Landlord a reasonable opportunity to address the issue. The Landlord denied knowledge of a pre-existing issue, and argued that the mice traps were put out as a precautionary measure. The Landlord testified that no complaints had been raised by previous tenants.

Analysis

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

45 (2) *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.

3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 [form and content of notice to end tenancy].

In this case, I find that the tenants failed to end the fixed term tenancy in a manner that complies with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenants obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy.

While I accept that the rental unit did have mice, I do not find that the evidence supports any deliberate attempt by the Landlord to conceal any prior knowledge of the mice. As noted by the Landlord, the Landlords have a contract with a pest control company, which shows that the Landlord has been diligent in addressing any concerns that may arise. While the Tenants referenced a conversation with a neighbour, the neighbour did not attend the hearing as a witness, nor did they provide a statement confirming this conversation.

I note that the tenants may end a tenancy pursuant to section 45(3) of the *Act*, for a material breach of the tenancy agreement, but in this case I find the Tenants did not follow the required steps, such as giving the Landlord prior written notice of the failure and giving the Landlord a reasonable period after this notice to comply with the material term.

The evidence is clear that the tenants did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the Tenants had vacated the rental unit contrary to Sections 44 and 45 of the *Act*.

I find that the landlord had provided detailed evidence to support their efforts to mitigate the Tenants' exposure to losses associated with the early termination of this tenancy, and as a result was able to fill the vacancy for October 16, 2025. Accordingly, I allow the Landlord their monetary claim of lost rental income of \$895.17 due to the Tenants' failure to end this tenancy in accordance with the *Act*.

I must now consider whether the Landlord is entitled to any liquidated damages as set out in Clause #1 of the tenancy agreement addendum.

Residential Tenancy Branch Policy Guideline #4 with respect to Liquidated Damages includes the following guidance with respect to the interpretation of such clauses:

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 considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into.

There are a number of tests to determine if a clause is a penalty clause or a liquidated damages clause. These include:

- *A sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach.*
- *If an agreement is to pay money and a failure to pay requires that a greater amount be paid, the greater amount is a penalty.*
- *If a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.*

If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent. Generally clauses of this nature will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum...

The Landlord drafted the agreement calling for payment of \$925.00 as liquidated damages in the event that the tenancy is terminated before the end of the fixed term. Whether or not an amount specified in a contract should be construed as liquidated damages or as a penalty is a question of law to be decided upon on the basis of a consideration of the whole agreement.

The amount claimed in an agreement as liquidated damages is intended to be an estimate of the loss that may be suffered by the landlord if the tenant breaches the agreement by ending the tenancy early.

I find that the Landlord is entitled to liquidated damages, as set out in the tenancy agreement, and as agreed to by both parties when signing the tenancy agreement. I do so as I accept the landlord's assertion that this sum of \$925.00 is to cover the costs associated with the early termination of this fixed-term tenancy. I find this to be a reasonable estimate of the landlord's loss in the event of a breach to cover costs, such

as the time and cost associated with advertising, interviewing, screening, and re-renting of the rental unit due to the early termination of this tenancy.

Therefore, I find the Landlord is entitled to a Monetary Order for Liquidated Damages as stipulated in the tenancy agreement in the amount of \$925.00.

As the Landlord had established that their application has merit, I allow the Landlord to recover the \$100.00 filing fee paid.

I dismiss the Tenant's claim for expenses as they had failed to establish that the Landlord had contravened the Act.

Under section 72 of the Act, I allow the Landlord to retain the Tenants' security deposit, plus interest, in partial satisfaction of the monetary awards granted.

Conclusion

The Tenants' entire application is dismissed without leave to reapply.

I issue a Monetary Order in the amount of **\$992.55** in the Landlord's favour for the monetary orders granted in the table below:

Item	Amount
Loss of Rent	\$895.17
Liquidated Damages	\$925.00
Recovery of Filing Fee	\$100.00
Less security deposit held, plus interest	-\$ 927.62
Total Monetary Order to Landlord	\$992.55

The Landlord provided with this Order in the above terms and the Tenant(s) must be served with a copy of this Order as soon as possible. Should the Tenant(s) 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 12, 2026

Residential Tenancy Branch