



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding IMH POOL XIV LP and METCAP LIVING  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, MNR, FF, MNSD

### Introduction

This hearing convened as a result of a Landlords' Application for Dispute Resolution wherein the Landlords requested monetary compensation from the Tenants for unpaid rent, compensation for loss and damage to the rental unit, authority to retain the security deposit and to recover the filing fee.

The hearing was conducted by teleconference on May 7, 2018. Only the Landlords' agent, S.P. called into the hearing. She gave affirmed testimony and was provided the opportunity to present the Landlords' evidence orally and in written and documentary form, and to make submissions to me.

The Tenants did not call into this hearing, although I left the teleconference hearing connection open until 1:24 p.m. in order to enable the Tenants to call in. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided to both parties in the Notice of Hearing. I also confirmed from the teleconference system that the Landlords' agent and I were the only ones who had called into this teleconference.

As the Tenants did not call in, service of the Landlords' hearing package was considered. The Landlords' agent testified that she served the Tenants with the Notice of Hearing and the Application on October 11, 2017 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision. The Landlords' agent confirmed that the first package was refused by the Tenants. At that time the Landlords also noticed that the address provided by the Tenants was incorrect (as they provided unit number 1100 rather than 110) and as such the Landlords corrected the address and resent the package on November 22, 2017. A copy of the registered mail tracking number for those two packages is also noted on the cover page.

*Residential Tenancy Policy Guideline 12—Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served by registered mail are deemed served five days later; accordingly, I find the Tenants were duly served as of November 27, 2017 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlords' agent's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenants?
2. What should happen with the Tenants' security deposit?
3. Should the Landlords recover the filing fee?

#### Background and Evidence

A copy of the tenancy agreement was provided in evidence and which confirmed that this one year fixed term tenancy began July 1, 2017. Monthly rent was payable in the amount of \$1,520.00 and the Tenants paid a \$760.00 security deposit.

The tenancy ended on September 30, 2018: prior to the expiration of the one year term.

The Landlords initially sought compensation for both October and November 2018 rent, although the agent confirmed at the hearing that the rental unit was able to be re-rented for November 1, 2018 such that at the time of the hearing the Landlords sought the sum of \$1,520.00 in unpaid rent.

The Landlords also sought the sum of \$760.00 in liquidated damages pursuant to section 6 of the tenancy agreement which reads as follows:

5. **LIQUIDATED DAMAGES.** If the tenant breaches a material term of this Agreement that causes the landlord to end the tenancy before the end of any fixed term, or if the tenant provides the landlord with notice, whether written, oral, or by conduct, of an intention to breach this Agreement and end the tenancy by vacating, and does vacate before the end of any fixed term, the tenant will pay to the landlord the sum of \$~~760.00~~ <sup>750.00</sup> as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit. Payment of such liquidated damages does not preclude the landlord from claiming further rental revenue losses that will remain unliquidated.

The Landlord also sought \$225.00 compensation for the parking incentive pursuant to a "Parking Stall License Agreement Addendum" (a copy of which was provided in evidence). The agent confirmed that as the Tenants ended their tenancy early, they were to repay the parking, which in this case was \$75.00 per month for three months, or a total of \$225.00.

The Landlord's agent also stated that the Tenants left a mattress and some other large pieces such that it cost the Landlord \$250.00 for removing the items.

The Landlords also sought the sum of \$200.00 for the cost of repainting due to large nail holes caused by the Tenants on three walls in the living room area.

### Analysis

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

The full text of the *Residential Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed via the website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlords have the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a landlord or tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

A fixed term tenancy gives a landlord and a tenant the confidence of a secure tenancy for the duration of the term. The tenant also has the added benefit of restrictions on a landlord's right to issue a 2 Month Notice to End Tenancy for Landlord's Use pursuant to section 49 as the effective date must not be earlier than the end of the fixed term. With these benefits are responsibilities, the most significant of which is that a tenant who enters into a fixed term tenancy is potentially liable for the payment of rent during the entire term. Fortunately in the case before me, the Landlords were able to re-rent the unit by November 2017 such that they only suffered one months' loss of rent. I find that the Tenants ended their fixed term tenancy early, such that they are liable for the Landlords' loss of rent for October 2017 and I therefore award the Landlords the **\$1,520.00** claimed.

*Residential Tenancy Policy Guideline 4—Liquidated Damages* provides in part as follows:

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.

I also find that the liquidated damages as set out in section 8 of the residential tenancy agreement is enforceable, and, as the Tenants ended their tenancy prior to the fixed term, I find that the Landlords are entitled to the **\$760.00** claimed in liquidated damages.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

- 37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
- (2) When a tenant vacates a rental unit, the tenant must
- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
  - (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I accept the Landlords' agent's evidence that the Tenants left behind large pieces of furniture which required removal. In doing so the Tenants breached section 37 of the *Act*. I therefore award the Landlords the **\$250.00** claimed for removal of the Tenants' furniture.

Section 32(3) of the *Act* further provides as follows:

32 ... (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Although a tenant is entitled to hang pictures and put a reasonable number of small holes in walls, I accept the Landlords' agent's evidence that the Tenants *damaged* the walls with large nail holes and failed to repair the damage as required by section 32(3). I therefore award the Landlords the **\$200.00** claimed for repair and painting of the walls which were damaged by the Tenants.

The addendum to the tenancy agreement specifically provides that the Tenants were entitled to free parking for a term of their tenancy, but would be required to repay the cost of parking in the event they ended their tenancy early. I therefore find the Landlords are entitled to the **\$225.00** claimed.

Having been successful with their Application, I award the Landlords recovery of the **\$100.00** filing fee.

### Conclusion

The Landlords are entitled to monetary compensation in the amount of **\$3,055.00** calculated as follows:

Loss of rent for October 2017	\$1,520.00
Liquidated damages	\$760.00
Reversal of parking incentive	\$225.00
Garbage removal	\$250.00
Wall repair and painting	\$200.00
Filing fee	\$100.00
<b>TOTAL AWARDED</b>	<b>\$3,055.00</b>

The Landlords may retain the Tenants security deposit in the amount of **\$760.00** and are granted a Monetary Order for the balance due in the amount of **\$2,295.00**. This

Order must be served on the Tenants and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: May 7, 2018

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Residential Tenancy Branch