



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, MNRL-S, FFL

### Introduction

On September 6, 2018, the Landlords submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for compensation and loss of rent, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlords attended the conference call hearing; however, the Tenant did not attend at any time during the 48-minute hearing. The Landlords testified that they personally served the Tenant with the Notice of Hearing by hand delivering a copy to the Tenant at his workplace on September 13, 2018. I find that the Tenant has been duly served with the Notice of Hearing in accordance with Section 89 the Act.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Tenant did not call into the conference, the hearing was conducted in their absence and the Application was considered along with the affirmed testimony and evidence as presented by the Landlords.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

Should the Landlord receive a Monetary Order for liquidated damages, in accordance with Section 67 of the Act?

Should the Landlord receive a Monetary Order for lost rent, in accordance with Section 67 of the Act?

Should the Landlord be authorized to apply the security deposit to the claim, in accordance with Sections 38 and 72 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

### Background and Evidence

The Landlords provided the following undisputed evidence:

The fixed term tenancy began on May 1, 2017, with a new Tenancy Agreement signed on May 1, 2018, with an end date of December 31, 2018. The monthly rent of \$2,200.00 was due on the first of each month. The Landlords collected and still hold a \$1,100.00 security deposit. One of the terms in the Tenancy Agreement noted a \$300.00 fee in liquidated damages if the Tenant vacated the rental unit prior to the end of the fixed term. All parties initialed this term and signed the Tenancy Agreement.

The Landlords testified that they developed their own form that was titled, "Agreement to End Tenant's Occupancy under the Lease Agreement," dated August 19, 2018 (the "Agreement"), where the Tenant agreed to vacate the rental unit on August 24, 2018. The Agreement continued several terms and all parties signed the Agreement. The Tenant moved out of the rental unit as agreed, on August 24, 2018. The Landlords stated that the Tenant has not provided a forwarding address and that the Landlords still hold the Tenant's security deposit.

The Landlords stated that the Tenant had failed to pay the August 2018 rent and the Landlords, through the Direct Request process with the Residential Tenancy Branch, applied for a Monetary Order for the August 2018 rent and an Order of Possession.

The Landlords testified that they began to advertise the rental unit and search for a new tenant on August 20, 2018. The Landlords stated that they used three different websites and placed a sign on the residential property to advertise the unit for rent. The Landlords established a new tenancy with a start date of October 1, 2018.

The Landlords are claiming the loss of rent for September 2018, in the amount of \$2,200.00 and the \$300.00 in liquidated damages for a total of \$2500.00.

### Analysis

The Landlords were successful with their Direct Request Application with the Residential Tenancy Branch in August 2018 and received a Monetary Order for the unpaid August 2018 rent and an Order of Possession for the rental unit. In the Decision dated August 24, 2018, the Adjudicator found that the Tenant was conclusively presumed to have accepted that the tenancy ended on August 20, 2018. I find that the tenancy ended as documented in the above Decision, dated August 24, 2018 and not as a result of the Agreement between the Tenant and the Landlords to end the occupancy.

Based on undisputed evidence, I find that the Tenant entered into a Tenancy Agreement with the Landlords that required the Tenant to pay monthly rent of \$2,200.00 through to December 2018. I find that the Tenant did not pay the September 2018 rent and as the Tenant is required to pay rent pursuant to Section 26(1) of the Act, I find that the Landlords have established a monetary claim in the amount of \$2,200.00 in outstanding rent. (the amount claimed by the Landlords).

I accept the Landlords' testimony that they mitigated their losses, in accordance with Section 7(2) of the Act, by attempting to rent out the rental unit throughout the end of August 2018 and into September 2018 and subsequently found a new tenant for October 2018.

I accept the Landlords' evidence that the Tenant breached a term of the Tenancy Agreement by moving out of the rental unit prior to the end of the fixed term. As a result, I find that the Landlords have established a monetary claim in the amount of \$300.00; the liquidated damages fee as noted in the Tenancy Agreement.

The Landlords were successful with their Application and as such, are entitled to be reimbursed for the cost of the filing fee, in the amount of \$100.00.

The Landlords have established a monetary claim, in the amount of \$2,600.00, which includes \$2,200.00 in unpaid rent, \$300.00 for liquidated damages, and \$100.00 in compensation for the filing fee for this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize the Landlord to keep the Tenant's security deposit of \$1,100.00, in partial satisfaction of the monetary claim.

Based on these determinations, I grant the Landlord a Monetary Order for the balance of \$1,500.00.

Conclusion

Pursuant to Section 67 of the Act, I grant the Landlords a Monetary Order for \$1,500.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims 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: January 08, 2019

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Residential Tenancy Branch