



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TRG REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** FFL MNDCL-S MNDL-S

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- a monetary order for money owed or compensation monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's agent, LP ("landlord"), attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

During the hearing the landlord confirmed that the tenant LL's first and last names were transposed on the landlord's application. As there was no opposition, the tenant's name was amended to reflect the tenant's proper name.

The landlord provided sworn testimony that he had also served the tenants on April 16, 2020 with the application for dispute resolution package and evidence by way of email to the email addresses that the landlord has used in the past for correspondence related to this tenancy. In accordance with sections 88, 89, 90, and the Order of the Director dated March 30, 2020, I find the documents deemed served to the tenants on April 19, 2020, 3 days after the documents were emailed.

**Issue(s) to be Decided**

Is the landlord entitled to monetary compensation for money owed or losses?

Is the landlord entitled to recover the filing fee for this application from the tenants?

**Background and Evidence**

This fixed-term tenancy began on August 30, 2019, and was to end on August 30, 2020. Monthly rent was set at \$2,800.00, payable on the 30<sup>th</sup> day of each month. The landlord collected a security deposit in amount of \$2,800.00 which is still held by the landlord. The tenants moved out on March 25, 2020.

The landlord is seeking the following monetary orders:

<b>Item</b>	<b>Amount</b>
Loss of Rent for April 2020	\$2,800.00
Strata Fine	200.00
Repairs for bathroom door damage	237.00
Cleaning Invoice	275.00
Filing Fee	100.00
<b>Total Monetary Order Requested</b>	<b>\$3,612.00</b>

The landlord's agent testified that the tenants moved out before the end of the fixed term tenancy, and the landlord was not able to re-rent the suite until May 15, 2020 for \$2,300.00 per month. The landlord is seeking the loss of rental income for the month of April 2020.

The landlord is also seeking reimbursement of the fine levied by the strata for the tenant's bylaw infraction. The landlord included a letter for an infraction that took place on or about March 25, 2020, which involves the disposal of a mattress in the garbage room. As a result the landlord was levied a \$200.00 fine.

The landlord submitted a copy of a move-out inspection report and a cleaning and repair invoices to support the losses associated with the tenants' failure to leave the suite in reasonably clean and undamaged condition. Although the tenants did not attend the hearing, the tenant submitted written evidence disputing the landlord's testimony that they did not clean the rental unit.

## **Analysis**

*Section 44 of the Residential Tenancy Act reads in part as follows:*

**44** (1) *A tenancy ends only if one or more of the following applies:*

*(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...*

*(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;*

*(c) the landlord and tenant agree in writing to end the tenancy;...*

*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.*

I find that the tenants had moved out prior to the end of this fixed term tenancy, in a manner that does not comply 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. The tenants moved out earlier than the date specified in the tenancy agreement.

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 vacated the rental unit contrary to Sections 44 and 45 of the *Act*. The evidence of the landlord is that they were unable to re-rent the suite until May 15, 2020 despite their efforts to advertise and re-rent the suite.

I am satisfied that the landlord had made an effort to mitigate the tenants' exposure to the landlords' monetary loss of rent for the remainder of the fixed-term, as is required by section 7(2) of the *Act*. Accordingly, I allow the landlord their monetary claim for loss of rental income in the amount of \$2,800.00.

I find that the landlord provided sufficient evidence to support that the tenants' bylaw infraction during this tenancy resulted in a \$200.00 fine. Accordingly, I allow the landlord's monetary claim to recover the \$200.00 paid by the landlord for this fine.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Although the tenants submitted written evidence disputing the landlord's claims that they failed to leave the unit in reasonably clean condition, I find the documentary evidence provided by the landlord supports that the tenants failed to leave the home in reasonably clean condition. I find the landlord had also provided sufficient evidence to support their monetary loss. Accordingly, I allow the landlord a monetary order in the amount of \$275.00 for cleaning.

Similarly, I am satisfied that the landlord had provided sufficient evidence to support that the tenants caused damage to the bathroom door, which cost the landlord \$237.00 in repairs. Accordingly, I allow the landlord's monetary claim for reimbursement for this repair.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. Accordingly, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

The landlord continues to hold the tenant's security deposit of \$2,800.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim.

### **Conclusion**

I allow the landlord's monetary claims as set out in the table below. The landlord is issued a monetary order in the amount of \$812.00. In accordance with the offsetting

provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in satisfaction of the monetary claim.

Item	Amount
Loss of Rent for April 2020	\$2,800.00
Strata Fine	200.00
Repairs for bathroom door damage	237.00
Cleaning Invoice	275.00
Filing Fee	100.00
Less Security Deposit Held by Landlord	-2,800.00
<b>Total Monetary Order</b>	<b>\$812.00</b>

The tenant(s) must be served with 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 *Residential Tenancy Act*.

Dated: August 27, 2020

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Residential Tenancy Branch