



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Veda 800 Kelowna Student Housing  
Ltd. Domus Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCL-S, FFL

### Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution, made on September 1, 2020 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage, compensation, or loss;
- an order to retain the Tenant's security deposit; and
- an order granting recovery of the filing fee.

The Landlord's Counsel C.W., and the Tenant attended the hearing at the appointed date and time.

C.W. testified that she served the Landlords' Application and documentary evidence package to the Tenant by registered mail on September 11, 2020. The Tenant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*. The Tenant stated she served a copy of her documentary evidence to the Landlord by email on December 10, 2020. C.W. stated that the Tenant's documentary evidence was not received by the Landlords.

### Preliminary Matters

Section 88 of the *Act* stipulates that documents such as evidence must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;

- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served; or
- (i) as ordered by an Arbitrator

According to the Residential Tenancy Branch Rules of Procedure 3.15;

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

The Tenant stated that her documentary evidence was served to the Landlord via email which I find contravenes Section 88 of the Act. The Tenant stated the email was only sent on December 10, 2020, 4 days before the hearing. I find this contravenes the requirement according to the Rules of Procedure 3.15. As C.W. stated that the Landlords did not receive the Tenant's documentary evidence, I find that the Tenant's documentary evidence will not be considered in this decision.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issue(s) to be Decided

1. Are the Landlords entitled to a monetary order for damage, compensation, or loss, pursuant to Section 67 of the *Act*?
2. Are the Landlords entitled to retain the Tenant's security deposit, pursuant to Section 38 and 72 of the *Act*?
3. Are the Landlords entitled to an order granting the recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the parties came together and agreed to enter into a three year fixed term tenancy which was meant to start on September 1, 2020. The parties had agreed that the Tenant would be required to pay rent to the Landlords in the amount of \$1,075.00 which was due on the first day of each month. The Tenant paid a security deposit in the amount of \$500.00 which the Landlords continues to hold. A copy of the tenancy agreement was provided in support.

The parties agreed that the Tenant signed the fixed term tenancy agreement on February 11, 2020, while the Landlords signed the agreement on February 13, 2020 in relation to the tenancy which was meant to begin on September 1, 2020. The parties agreed that the Landlords received an email from the Tenant on June 10, 2020 in which the Tenant indicated that she would be unable to move into the rental unit given that the Tenant's on campus classes were cancelled due to the Covid-19 pandemic.

C.W. stated that the Tenant was provided with the option of subletting her rental unit, however, the Tenant was unsuccessful in finding a sub tenant to assume possession of the rental unit. C.W. stated that the Landlords re-listed the rental unit for rent in August 2020 after the Tenant did not take possession of the rental unit. C.W. stated that the Landlords are seeking \$500.00 in relation to the administrative costs associated with re-renting the rental unit.

C.W. stated that the Landlords are also seeking monetary compensation in the amount of \$1,075.00 for the loss of rent for September 2020 as the Tenant broke the fixed term tenancy prior to taking possession of the rental unit.

The Tenant stated that aside from the Landlords requesting an administrative fee during an email conversation, she did not agree to this term in the tenancy agreement. The Tenant confirmed that she is a student and that her schooling was cancelled due to Covid-19. The Tenant stated that she provided the Landlords with ample notice that she

would no longer require the rental unit and feels as though the Landlords should have been able to re-rent the rental unit during this time. As such, she doesn't feel as though she should be responsible for paying any loss of rent to the Landlords.

### Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlords to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

According to Section 45 of the *Act*, 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.

The Residential Tenancy Policy Guideline #30 states that during the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties. A tenant may end the tenancy if the landlord has breached a material term of the tenancy agreement. The tenant must give proper notice under the Legislation. Breach of a material term involves a breach which is so serious that it goes to the heart of the tenancy agreement.

In this case, the Tenant stated that they felt justified in ending the fixed term agreement due to the fact that she was no longer required to attend her school due to the Covid-19 pandemic. In this case, I find that the Tenant was not permitted to end the fixed term tenancy early. I find that the Landlords did not agree to end the tenancy and I find that the Tenant provided insufficient evidence to demonstrate that the Landlord breached a material term of the tenancy agreement. As such, I find that the Landlords are entitled to monetary compensation for the loss of September 2020 rent in the amount of \$1,075.00.

The Landlord is also claiming \$500.00 for compensation relating to administrative fees associated with re-renting the rental unit. I find that the Landlords provided insufficient evidence to demonstrate the value of their loss. I find that this claim relates to liquidated damages which is defined as liquidated damages in the Residential Policy Guideline 4;

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.

I find that the tenancy agreement provided by the Landlords does not contain a liquidated damages clause. In light of the above, I dismiss the Landlord's claim to recover administrative costs to re-rent the rental unit without leave to reapply.

Having been partially successful, I find the Landlords are entitled to recover the **\$100.00** filing fee paid to make the Application. I also find it appropriate in the circumstances to order that the Landlords retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlords are entitled to a monetary order in the amount of \$675.00, which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
Rent September 2020	\$1,075.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-( <i>\$500.00</i> )
<b>TOTAL:</b>	<b>\$675.00</b>

### Conclusion

The Tenant has breached the *Act* by ending the fixed term tenancy early. The Landlords are granted a monetary order in the amount of \$675.00. The order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of BC (Small Claims).

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: December 15, 2020

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Residential Tenancy Branch