



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding RA REALTY ALLIANCE INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL-S MNRL-S MNDCL-S FFL

### Introduction

This dispute relates to the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for the following:

1. \$5,547.70 for unpaid rent, liquidated damages, cleaning costs, damages, filing fee,
2. To offset any amount owing with the tenant's security deposit.

The parties attended the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide her evidence orally. A summary of that evidence is provided below and includes only that which is relevant to the hearing.

After service was addressed, the hearing continued. Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Preliminary and Procedural Matter

The parties confirmed their respective email addresses and were advised that that the decision would be sent by email.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?
- Should the filing fee be granted?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on August 15, 2022, and was scheduled to convert to a month-to-month tenancy after August 31, 2023. Monthly rent of \$3,000 was due on the first day of each month. A security deposit of \$1,500 was paid by the tenant at the start of the tenancy, which the landlord continues to hold. I will determine the interest on that security deposit later in this decision.

The landlord's monetary claim according the Monetary Order Worksheet submitted by the applicant is comprised of the following:

1. March rent (half)	\$1,500
2. Liquidated damages	\$3,000
3. House cleaning	\$283.50
4. Fridge door replacement	\$440.20
5. Fees for returned cheques	\$66.50
6. Fridge door installation cost	\$157.50
7. Filing fee	\$100
<b>TOTAL</b>	<b>\$5,547.70</b>

Regarding item 1, the landlord has claimed \$1,500 for half of March 2023 rent due to the cheque being returned as insufficient funds by the bank. The landlord stated they only received \$1,500 from new tenants for March rent in total and are still owed \$1,500 as a result from the tenant. The tenant claims that the stop payment was due to a banking error.

The tenant confirmed they gave notice to end the tenancy via email on February 20, 2023, indicating that the tenant would be vacating the rental unit on March 11, 2023, which I will address in further detail later in this decision. During the hearing, the parties reached a mutual agreement whereby the tenant agreed to relinquish their security deposit towards the \$1,500 unpaid portion of March 2023 rent.

Regarding item 2, the landlord is seeking \$3,000 for liquidated damages. The liquidated damages clause listed under 7 in the addendum reads as follows:

7. LIQUIDATED DAMAGES IN THE EVENT OF BREAKING THE LEASE: If the Tenant(s) repudiates or breaches the fixed term tenancy before the end of the original term, the Landlord may, at the Landlord's option, treat this Agreement as being at an end. In such event, the sum of one month's rent (as of this contract) will be paid by the Tenant(s) to the Landlord or RA Realty Alliance as damages, and not as a penalty, toward the administration costs of re-renting the Rental Unit. The Landlord and Tenant(s) acknowledge and agree that the payment of such damages will not preclude the Landlord from exercising any right of pursuing any remedy available in law or in equity for breach of this Agreement, including, but not limited to, claims for loss or damage pertaining to the Rental Unit or its appliances, furniture, furnishings or finishes, and damages incurred as a result of lost rental income, or any other costs or losses arising from or related to the Tenant(s) repudiation or breach of any term of this Agreement. The Landlord shall have no obligation to accept any repudiation or breach of the lease by the Tenant(s), and payment of the said sum of one month's rent shall not limit the Landlord's rights, remedies or claims in any way.

The tenant's response to this item was that they did showings of the rental unit and even listed the property for rent before notice was given to the landlord that they would be ending the tenancy. The tenant testified that there were at least 20 responses to the rental ad and showed the rental unit 5 or 6 times. The tenant stated that a few tenants wanted the rental unit for March 1<sup>st</sup>; however, they were not approved by the landlord. New tenants moved into the rental unit paying \$3,000 per month as of March 16, 2023.

The tenant confirmed that their written forwarding address was provided via text on March 11, 2023, and the landlord responded to that text 7 minutes after it was sent. The landlord failed their application claiming towards the security deposit on March 24, 2023.

Regarding item 3, the parties reached a mutual agreement for cleaning costs at \$283.50.

Regarding item 4, the landlord has claimed \$440.20 for dents to the fridge at the top left corner. The incoming Condition Inspection Report (CIR) indicates "Dents on door" with the code S for scratched. The outgoing CIR indicates "More dents & scratches on top left door". The landlord failed to submit any photo evidence for comparison purposes between the start of tenancy condition of the fridge door versus the outgoing condition of the fridge door.

The tenant testified that they do not recall denting the fridge and does recall the dents and scratches on the fridge at the start of the tenancy.

Regarding item 5, the parties reached a mutual agreement for fees related to the returned rent cheques from the bank in the amount of \$66.50.

Regarding item 6, the landlord has claimed \$157.50 to install the replacement fridge door. The agent confirmed that the fridge door has not been ordered or replaced. There is no date on the quote provided in evidence. The tenant disagrees with this item and wonders why the door has to be replaced when it was damaged at the start of the tenancy.

Item 7 relates to the filing fee of \$100, which will be addressed later in this decision.

### Analysis

Based on the undisputed testimony of the landlord provided during the hearing, the documentary evidence and on the balance of probabilities, I find the following.

#### *Test for damages or loss*

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 in sections 7 and 67 of the *Act*. Accordingly, 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 instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. 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 everything possible to minimize the damage or losses that were incurred.

**Item 1** - The landlord claimed \$1,500 for half of March 2023 rent and the parties reached a mutual agreement whereby the tenant agreed to relinquish their security deposit towards the \$1,500 unpaid portion of March 2023 rent. As a result, I find I do not need to consider this matter as the parties reached a settlement agreement pursuant to section 63 of the *Act* for this item.

**Item 2** - The landlord is seeking \$3,000 for liquidated damages. The liquidated damages clause listed under 7 in the addendum does not include a specific amount and instead relies on this wording in part:

7. LIQUIDATED DAMAGES IN THE EVENT OF BREAKING THE LEASE: If the Tenant(s) repudiates or breaches the fixed term tenancy before the end of the original term, the Landlord may, at the Landlord's option, treat this Agreement as being at an end. in such event, the sum of one month's rent (as of this contract) will be paid by the Tenant(s) to the Landlord or RA Realty Alliance as damages, and not as a penalty, toward the administration costs of re-renting the Rental Unit. The Landlord and Tenant(s) acknowledge and agree that the

After carefully reviewing this wording and considering RTB Policy Guideline 4 – *Liquidated Damages* (Guideline 4) I find the following. Guideline 4 states 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.

[emphasis added]

I find Guideline 4 takes a reasonable approach and I find that the landlord has failed to prove that the amount of \$3,000 in this matter as that is the amount of monthly rent is a genuine pre-estimate of the loss. I have reached this finding as the landlord submitted no evidence of invoices for re-renting costs and were able to re-rent as of March 15, 2023, which was extremely quickly.

In addition, by using this standardized wording, I find the landlord fails to consider an actual pre-estimated value as a tenancy for only \$2,000 would be \$1,000 less than the tenancy in this matter yet has no receipts or invoices to explain the disparity in the estimated loss which must be genuine. As a result, I find the standardized wording used by the landlord is not a genuine pre-estimate and I find it is not an enforceable term as result. I find that the standardized wording used is nothing more than a penalty to the tenant, which is not permitted under the Act.

Given the above, I dismiss this item without leave to reapply, due to insufficient evidence.

**Item 3** - The parties reached a mutual agreement for cleaning costs at \$283.50.

**Item 4** - The landlord has claimed \$440.20 for dents to the fridge at the top left corner. Given that the incoming CIR indicates dents and scratches and without photos of the fridge at the start of the tenancy, I find that the landlord has failed to prove that the dents submitted at the end of the tenancy were caused by the tenant. Therefore, I dismiss this item without leave to reapply, due to insufficient evidence.

**Item 5** - The parties reached a mutual agreement for fees related to the returned rent cheques from the bank in the amount of \$66.50.

**Item 4** – Consistent with my finding for item 4, I find that this item which is for \$157.50 must fail as I have already dismissed the claim for damages to the fridge door in item 4. I find the fridge door does not need to be replaced as the tenant used the fridge while it was dented and scratched without complaint. This item is dismissed without leave to reapply due to insufficient evidence.

Regarding the filing fee, as there was some merit to the application before me, I grant the landlord the **\$100** filing fee pursuant to section 72 of the Act.

I find that the landlord has established a total monetary claim in the amount of **\$1,950** as follows:

1. March rent (half)	\$1,500 by settlement
2. Liquidated damages	dismissed
3. House cleaning	\$283.50 by settlement
4. Fridge door replacement	dismissed
5. Fees for returned cheques	\$66.50 by settlement
6. Fridge door installation cost	dismissed
7. Filing fee	\$100
<b>TOTAL</b>	<b>\$1,950</b>

Under the Act, I find the security deposit of \$1,500 has accrued interest in the amount of **\$9.46**, and as a result, I find the landlord is holding a security deposit including interest in the amount of **\$1,509.46**.

Given the above, I find that \$1,950 less security deposit and interest of \$1,509.46 equals **\$440.54**. I grant the landlord a monetary order under section 67 for the balance

due to the tenant to the landlord in the amount of **\$440.54**. Should the tenant fail to pay the landlord as ordered, the landlord must serve the tenant with the monetary order and may enforce the monetary order in the Provincial Court of British Columbia, Small Claims Division.

### Conclusion

The landlord has established a total monetary claim in the amount of \$1,950.

After the tenant has relinquished their security deposit and interest of \$1,509.46 to the landlord, the landlord has been granted a monetary order of \$440.54.

This decision will be emailed to both parties. The monetary order will be emailed to the landlord for service on the tenant, if necessary.

I order the parties to comply with their settlement agreement described above pursuant to section 63 of the Act.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 28, 2023

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Residential Tenancy Branch