

# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **DECISION**

### **Dispute Codes:**

MNR, MNSD, MNDC, FF

### **Introduction**

This hearing was convened in response to an application by the landlord for a Monetary Order to recover rental arrears, money owed or compensation for damage or loss (loss of revenue) and inclusive of recovery of the filing fee associated with this application, and an order to retain the security deposit in partial satisfaction of the monetary claim.

Despite having been served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Residential Tenancy Act (the Act) the tenant did not participate in the conference call hearing.

### **Issue(s) to be Decided**

Is the landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

The tenancy began on July 01, 2008 as a fixed term tenancy ending June 30 2009. Rent in the amount of \$650 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$325. The landlord testified that the tenant vacated the rental unit February 28, 2009 in breach of the Tenancy Agreement. The tenant did not pay rent in the month of January 2009 as the result of the benefit of a special promotion for "PAP" and a one year lease rendering the month of January 2009, rent free. However, clause 3d of the Tenancy Agreement identifies that if the tenant breaches the lease or vacates prior to the end of the term any such promotion or rent consideration given to the tenant must be repaid by the tenant. Therefore, in spite of the tenant paying rent for February 2009, the tenant is deemed to have failed to pay rent in the month of January 2009 in the

amount of \$650. The tenant vacated February 28, 2009. The landlord claims rent of \$650 for March 2009 as loss of revenue, as well as \$100 for carpet cleaning, \$97 for blind cleaning as per 8b of the Tenancy Agreement, and \$250 for “Lease Breaking Fee” or liquidated damages as per clause 7b of the Tenancy Agreement. Amongst other items, the landlord provided a copy of the Tenancy Agreement, move in and move out inspections and proof of service upon the tenant.

The total of the landlord’s monetary claim on application is **\$1747**.

### **Analysis**

Based on the landlord’s testimony **I find** the tenant has not paid the outstanding rent for January 2009 and has not applied for dispute resolution. Therefore, the landlord is entitled to the rent for January 2009 in the amount of **\$650**.

I find that clause 8b of the Tenancy Agreement, as identified by the landlord, states that, *“If the carpets and blinds have been professionally cleaned prior to move in by the landlord, the tenant shall be responsible to have them professionally cleaned upon move out. If the tenant fails to restore the premises to the same condition as it was in on the date of commencement of this Tenancy Agreement the tenant will be liable for the costs incurred by the landlord to do the same”*.

I find the *move in* inspection report signed by the landlord and the tenant is silent on the condition of a number of items and factors, but distinctly and specifically silent in respect to the condition of the carpet and blinds. Under clause 8b of the landlord’s own instrument, the tenant is not liable for the charges for Carpet Cleaning and Blinds Cleaning. Therefore, **I decline** to grant the landlord costs totalling \$197 for carpet cleaning and blinds cleaning.

The landlord is seeking liquidated damages in the amount of \$250 (“lease breaking fee” (clause 7b in Tenancy Agreement) **and** loss of revenue for March 2009. However, I find that the liquidated damages clause 7b states that, *“If the tenant ends the fixed term tenancy before the end of the original term. . . , the landlord may, at the Landlord’s option, treat the Tenancy Agreement as being at an end”, “ In such an event, the sum of \$250 will be paid by the tenant to the landlord as liquidated damages”*. **I find** the Tenancy Agreement provides the landlord with two distinct options: either claiming \$250 as liquidated damages thereby treating the Agreement as being at an end **or** treat the

Agreement as continuing, in which case the obligations under the Agreement, such as loss of revenue for March 2009 continue. However, clause 7b further states the landlord may make further claims with respect to the Agreement even after ending the Agreement on claiming the liquidated damages.

**I find** that the landlord cannot claim liquidated damages as well as loss of revenue for March 2009. The landlord may claim liquidated damages of \$250 and ending the Agreement or drop the claim for liquidated damages, in which case the Agreement is not treated as at an end – allowing the landlord to seek loss of revenue for March 2009. As it is the landlord's instrument which is at the root of this apparent lack of clarity, I choose to resolve the ambiguity in favour of the tenant. **I find** the landlord is entitled to the claim of **\$250** for liquidated damages, and I disallow the landlord's loss of rental revenue claim for March 2009 in the amount of \$650.

The quantum of the landlord's entitlements is **\$900**.

As for the monetary order, I find that the landlord has established a claim for **\$900** in unpaid rent and liquidated damages. As the landlord is partially successful in their claim, the landlord is also entitled to partial recovery of filing fee in the amount of **\$25**, for a total entitlement of **\$925**.

### **Conclusion**

**I order** that the landlord retain the deposit and interest of \$327.45 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$597.55**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated June 29, 2009