



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### **Dispute Codes**

MNR MNSD FF

### **Introduction**

This hearing was convened in response to an application by the landlord for a monetary order for unpaid rent, to keep the security deposit in partial satisfaction of the monetary claim and to recover the filing fee.

I accept the landlord's evidence that despite the tenant 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.

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

Is the landlord entitled to the momentary amounts claimed?

### **Background and Evidence**

This tenancy began as a one year fixed-term tenancy agreement starting on May 01, 2009. The tenancy ended when the tenant vacated on September 30, 2009. Rent was in the amount of \$1200 per month payable on the 1<sup>st</sup>. of each month. At the outset of the tenancy the landlord collected a security deposit of \$600. On August 31, 2009 the tenant gave the landlord notice they would be vacating on September 30, 2009. The landlord responded to the tenant's Notice to end via letter on September 9, 2009 that should the tenant vacate prior to the expiry of the fixed term lease that they would be responsible for the stipulated liquidated damages within the lease, and further be responsible for rent during any period of time the property remained vacant. The landlord testified they actively advertised the unit, but despite their efforts they re-rented the unit November 01, 2009.

The landlord provided into evidence a copy of the fixed term lease, and correspondence with the tenant in respect to this matter. Under item 23 of the Tenancy Agreement it stipulates: 23. *Additional Terms*;

“If the tenants fail to fulfill the lease agreement they will be responsible to pay \$300.00 in liquidated damages, as well as other incurred costs associated with the re-rental of the premises.”

The landlord’s claim for liquidated damages is for only \$40 as the tenant’s payments incurred a credit for the tenant of \$260. The landlord seeks a further \$1200 for loss of revenue for October 2009, and the filing fee.

### **Analysis**

I find the Tenancy Agreement is, in the least, ambiguous, on the matter of the tenant’s financial obligations in the event the tenant fails to fulfill the “lease agreement”. The tenancy agreement is clear the tenant is responsible for paying \$300 in liquidated damages. A liquidated damages clause is a clause in a tenancy agreement where the parties *agree in advance* of the tenancy as to what damages are payable in the event of a breach of the tenancy agreement – and that the amount must reflect a genuine pre-estimate of the loss, at the time the contract is entered. In this case, that pre-estimate agreed to by the parties as to what damages are payable in the event of a breach of the tenancy agreement - is \$300, “*as well as other incurred costs associated with the re-rental of the premises.*” The landlord is not claiming other costs associated with re-renting the premises; and, I do not find the tenancy agreement obligates the tenant to pay anything further in the event they fail to fulfill the “lease agreement”. As the landlord has determined to invoke the end of tenancy clause of the tenancy agreement, I find the landlord has treated the tenancy to be at an end, and is justified in claiming all valid conditions of the end of tenancy clause: liquidated damages of \$300 and, “other incurred costs associated with the re-rental”, of the rental unit. As a result, I find the landlord is only entitled to the claimed balance of the liquidated damages, in the amount of **\$40**, and **I dismiss** the landlord’s portion of the application claiming loss of revenue, without leave to reapply. The landlord is entitled to recover the filing fee of **\$50**, for a total entitlement to the landlord of **\$90**.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

### **RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION**

The Arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord’s application to retain all or part of the security deposit, or

- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of their monetary claim. Because the landlord's claim has, for the majority, been dismissed without leave to reapply, it is appropriate that I order the return of the balance of tenant's security deposit. I so order and I grant the tenant a Monetary Order in the amount of **\$510**.

### Conclusion

The landlord may retain **\$90** of the tenant's security deposit in satisfaction of their entitlement claim.

The tenant is being given a Monetary Order under section 67 of the Act in the amount of **\$510**. If necessary, this order may be registered in the 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 18, 2010.

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