



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with an application by the landlord for an order permitting her to retain the security deposit as liquidated damages and to recover the filing fee paid to bring her application. Both parties participated in the conference call hearing.

### Issue to be Decided

Is the landlord entitled to liquidated damages?

### Background and Evidence

The parties agreed that the tenant signed a tenancy agreement on February 25 and paid a \$325.00 security deposit. The parties further agreed that on February 26 the tenant advised the landlord in writing that she would not be moving into the rental unit and requested the return of her security deposit. On April 9 the tenant gave the landlord her forwarding address and again requested the return of the deposit. The landlord made her application on April 21.

The tenancy agreement contains the following liquidated damages provision:

If the tenant ends the fixed term tenancy, or is in breach of the Residential Tenancy Act or a material term of this Agreement that causes the landlord to end the tenancy before the end of the term as set out in B above, or any subsequent fixed term, the tenant will pay to the landlord the sum of \$300.00 as liquidated damages and not as a penalty. Liquidated damages are an agreed pre-estimate of the landlord's costs of re-renting the rental unit and must be paid in addition to any other amounts owed by the

tenant, such as unpaid rent or for damage to the rental unit or residential property.

The landlord testified that as a result of the tenant's actions, she had to place further advertisements, show the suite, interview prospective tenants and process further applications.

The tenant argued that the landlord is not entitled to liquidated damages because the tenancy was set to start on April 1 and the landlord was able to re-rent it for that date, so suffered no loss. The tenant further argued that in the letter dated February 26 the tenant requested the return of the security deposit and the landlord failed to reply within 15 days of that date so the tenant should be entitled to receive double her security deposit pursuant to section 38 of the Act. Although the February 26 letter did not contain a forwarding address for the tenant, the tenant argued that the landlord should have known the tenant's address as it was on her application to rent the unit. The tenant further argued that the landlord's agent, who was not called to testify at the hearing, had told her it would not be a problem to terminate her agreement before it began.

### Analysis

The tenancy agreement clearly sets out the liquidated damages provision. I find that the liquidated damages are a genuine pre-estimate of the cost of advertising, showing the suite and processing applications. Residential Tenancy Policy Guideline #4 provides that "If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent." I find the term to be valid and find that there is no reason why it should be struck down.

I do not accept the tenant's argument that the landlord failed to make her application within 15 days of receiving the forwarding address. The letter of February 26 did not contain a forwarding address and gave no indication that the landlord should use the address on the rental application. Section 38(1)(b) of the Act states that the landlord has 15 days from the later of the end of the tenancy and the date she received the

forwarding address in writing to make her claim. I find that the landlord did not receive the tenant's forwarding address in writing until April 9 and that she filed her claim within the required timeframe.

The landlord agreed to accept the \$325.00 security deposit in full satisfaction of her claim. I award the landlord \$300.00 representing liquidated damages and a further \$25.00 in recovery of her filing fee.

Conclusion

The landlord may retain the security deposit in full satisfaction of her claim.

Dated: August 09, 2010

---

Dispute Resolution Officer