



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by two agents for the landlord, the male tenant and the tenant's agent.

During the hearing the landlord noted that he was not going to pursue compensation for the condition of the rental unit but only that he wanted to pursue the lost rent and liquidated damages. As such, I amend the landlord's application to exclude these noted matters and reduce the claim to \$3,292.50.

In addition the landlord's claim detailed the liquidated damages amount as the equivalent of ½ month's rent, however the tenancy agreement stipulates that the liquidated damages would be the equivalent of 1 month's rent. I amend the value of the landlord's claim to \$4,390.00.

### Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for lost rent; for liquidated damages; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties submitted copies of a tenancy agreement signed by both parties on August 14, 2009 for a 1 year fixed term tenancy beginning on September 1, 2009. The tenancy agreement states that pro-rated rent of \$2,195.00 was to be paid for the month of September 2009.

The tenancy agreement goes on to say that the monthly rental is \$0 due on the 1<sup>st</sup> day of each month. However, from the additional evidence and testimony provided it is clear the parties do not dispute that the monthly rental amount was \$2,195.00.

The tenancy agreement also stipulates that a security deposit of \$1,097.50 was paid by the tenants and that the landlord agrees to charge a sum equal to one month's rent liquidated damages for breaking the agreement.

The tenants submitted a copy of a letter from the tenants to the landlord dated as June 25, 2010 indicating that they will be moving out of the rental unit effective June 30, 2010. The parties agree the tenants vacated the rental unit prior to the effective date of their notice.

The landlord testified that the rental unit was re-rented by mid August and that the landlord uses multiple media for advertising including newspaper ads; Craigslist; their own website and additional internet sites and although some of those mechanisms are free administrative time is required to ensure their ads are up-to-date.

The landlord also testified that each time they have a tenancy end in this particular section of the community, with higher end rentals the landlord puts several thousands of dollars into re-renting the units to new tenants.

As such, on these units the landlord charges a full month's rent for liquidated damages, in contrast to other areas of the city where they charge only ½ month's rent. The landlord provided no evidence to confirm these amounts.

### Analysis

Section 45(2) of the *Act* states a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is not earlier than the date specified in the tenancy agreement as the end of the tenancy.

As the notice to end the tenancy is not compliant with Section 45(2) in that it indicates the effective date as two months prior to the end of the fixed term and less than one month after the date the landlord received the notice, I find the tenant is responsible for the rent for the period of time the landlord was unable to rent the rental unit, August 15, 2010.

Section 7 of the *Act* requires a landlord who is making a claim for loss resulting from a tenant's breach of a tenancy agreement must do whatever is reasonable to minimize the loss. I accept the landlord did everything reasonable to rent the unit as soon as possible, in light of both the short notice and the effective date.

Residential Tenancy Policy Guideline #4 provides guidance when a party seeks to enforce a liquidated damages clause to determine whether the liquidated damages clause constitutes a genuine pre-estimate of the loss or a penalty that is unenforceable.

The guidelines state that if the sum is extravagant in comparison to the greatest loss that could follow a breach it is a penalty. The guidelines also require that the amount be

a pre-estimate of the costs faced by the landlord should the tenant breach the tenancy agreement.

In the absence of any supporting evidence, I am not persuaded by the landlord's assertion that when a tenancy agreement ends that the cost to the landlord to re-rent the unit, which constitute the reasonable steps required to mitigate any losses costs the landlord several thousand dollars.

I also am not persuaded that by tying the amount of the liquidated damages to the amount of rent paid during the tenancy provides any consideration at all to the costs associated with the tenant's breach, particularly, as the landlord charges a full month for liquidated damages in one party of the city and ½ month in another part of the city.

As the costs would be associated solely with advertising, showing and assessing tenant applications, the landlord has failed to substantiate how this amount constitutes a genuine pre-estimate of these costs.

For these reasons, I find the landlord's liquidated damages clause to be not enforceable. I dismiss this portion of the landlord's application

### Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$3,342.50** comprised of \$3292.50 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$1,097.50 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$2,245.00**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) 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: November 30, 2010.

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Dispute Resolution Officer