



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNR; MNDC, MNSD; FF

### **Introduction**

This is the Landlord's application for a Monetary Order for unpaid rent and loss of revenue; to retain the security deposit in partial satisfaction of her monetary award; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

### **Preliminary Matter**

The Landlord's agent testified that the Landlord was able to re-rent the rental unit effective March 15, 2011, and therefore the Landlord withdraws her application for loss of revenue and seeks to recover unpaid rent for the period of March 1, 2011 to March 14, 2011 only.

### **Issues to be Decided**

- Is the Landlord entitled to a Monetary Order for loss of rent for March 1 to 14, 2011 and liquidated damages for the Tenant's early termination of the lease agreement?

### **Background and Evidence**

The Landlord's agent gave the following testimony:

On December 29, 2010, the parties entered into a tenancy agreement. A copy of the agreement was provided in evidence. It is a fixed term lease, commencing January 1, 2011 and ending December 31, 2011. Monthly rent is \$900.00, due the first day of each month. The Tenant paid a security deposit in the amount of \$450.00 at the beginning of the tenancy.

On February 27, the Landlord received an e-mail from the Tenant indicating that she would be ending the tenancy on February 28, 2011.

The Landlord was able to re-rent the rental unit on March 15, 2011, and the new tenant paid \$450.00 prorated rent for March. The Landlord seeks to recover the remainder of March's rent from the Tenant, in the amount of \$450.00.

The Landlord also seeks liquidated damages in the amount of \$450.00 plus HST, and the cost of a credit check for the new tenant in the amount of \$10.45, for a total of \$514.45.

The Tenant gave the following testimony:

The Tenant lost her job and was not able to pay rent. The Tenant stated that she had agreed that the Landlord could keep the security deposit for liquidated damages and that she would have paid the Landlord for ½ of March's rent so the Landlord did not need to file an Application. Therefore the Tenant does not believe the Landlord is entitled to recover the filing fee from the Tenant.

### **Analysis**

The Tenant signed a one year lease with the Landlord. The Tenant ended the tenancy early, without any notice, and the Landlord suffered a loss as a result of the Tenant's failure to comply with the terms of the tenancy agreement. Therefore, I find the Landlord is entitled to her claim for \$450.00 for ½ of March's rent.

There is a clause in the tenancy agreement providing for liquidated damages. Liquidated damages are an **amount certain** that the parties agree to in the event the Tenant ends the tenancy early and are intended to cover the Landlord's administrative costs in re-renting the rental unit. In this case, the amount required for liquidated

damages were identified as one half of one month's rent. Therefore, I find that the Landlord is entitled to a monetary award in the amount of \$450.00 from the Tenant. The Landlord is not entitled to HST on the liquidated damages or for the cost of a credit check on the incoming tenant.

A landlord holds a security deposit in a form of trust for the Tenant and cannot arbitrarily decide to apply the security deposit towards unpaid rent or damages **without the written consent of the Tenant**. Neither can the parties agree at the beginning of the tenancy that the Landlord may keep the security deposit if the Tenant owes rent, or damages the rental unit. The security deposit **must** be applied in accordance with the provisions of Section 38 of the Act. A landlord must apply against the security deposit within 15 days of the end of tenancy, or the date that the landlord is provided with the tenant's forwarding address, or the landlord may be ordered to pay double the amount of the security deposit to the tenant. In this case, the Tenant did not provide the Landlord with written consent that she could apply the security deposit towards unpaid rent or damages and therefore the Landlord was obliged to file an application to avoid paying double the amount of the security deposit to the Tenant. The Landlord has been successful in her application and is entitled to recover the cost of the filing fee from the Tenant.

The Landlord has established a monetary claim as follows:

Rent for ½ of March, 2011	\$450.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$950.00
Less security deposit	<u>- \$450.00</u>
<b>TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF</b>	<b>\$500.00</b>

### **Conclusion**

I hereby provide the Landlord a Monetary Order in the amount of **\$500.00** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (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: June 22, 2011.

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Residential Tenancy Branch