



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNDC, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for a Monetary Order for damage to the unit, site or property, for unpaid utilities, for compensation for loss or damage under the Act or tenancy agreement, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on March 30, 2011. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlords' hearing package as required by s. 89 of the Act and the hearing proceeded without the Tenant in attendance.

### Issues(s) to be Decided

1. Is there damage to the unit and if so how much?
2. Are the Landlords entitled to compensation for damage to the unit and if so how much?
3. Are there utility arrears and if so, how much?
4. Is the Landlord entitled to compensation for unpaid utilities and if so how much?
5. Are there losses or damages to the Landlord and if so how much?
6. Is the Landlord entitled to compensation for loss or damage and if so how much?
7. Is the Landlord entitled to keep the Tenant's security deposit?

### Background and Evidence

This tenancy started on July 22, 2010 as a 1 year fixed term tenancy with an expiry date of July 31, 2011. Rent is \$1,300.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$ 650.00 on July 22, 2010. The Tenancy ended on March 13, 2011.

The Landlord said that the Tenant gave written notice to end the tenancy on February 1, 2011 for March 15, 2011. The Landlord said they accepted the Tenant's Notice to End the Tenancy, but the Landlord said she told the Tenant she would be responsible for the rent if they could not re-rent the unit as the tenancy agreement was for a fixed term expiring on July 31, 2011. As well the Landlord said the Tenant was responsible for the

management company fee to find another tenant because the Tenant ended the tenancy early. The Landlord said this is stated in the tenancy agreement in clause 5 Liquidated Damages. This clause says the Tenant shall pay \$575.00 to the Landlord if the tenancy is breached or ended early by the Tenant and the Landlord incurs costs to re-rent the unit. The Landlord said the management fee to re-rent the unit was \$700.00, but they are claiming \$575.00 as stated in the tenancy agreement. The Landlord said this is not a penalty to the Tenant, but a cost the Landlord had to pay. The Landlord submitted a statement showing the payment of the \$700.00 as a placement fee to the management company.

The Landlord continued to say they are also claiming \$50.00 per month for April, May June and July, 2011 as when the unit was re-rented the agent dropped the rent by \$50.00 per month. The Landlord said the rent was \$1,300.00 per month and their agent re-rented it for \$1,250.00 per month. The Landlord said they believe the Tenant is responsible for the difference in the rent amounts because of the fixed term tenancy agreement.

The Landlord continued to say the Tenant owes \$38.08 in unpaid utilities but they did not have any documentation to confirm this amount. The Landlord said the clerk at the utilities office calculated the amount as an estimate of the amount of utilities owing from July 22, 2010 to August 1, 2010.

The Landlord continued to say they are claiming \$20.00 for repairs to the bathroom wall which the Tenant agreed to on the move out condition inspection report. The \$20.00 represents the Landlord labour and some materials to repair a hole in the wall.

The Landlord also said she is seeking to recover the \$50.00 filing fee for this proceeding.

### Analysis

Section 4 of the Residential Tenancy Policy Guidelines says liquidated damages can be claimed if the claim is not a penalty, but represents a legitimate cost the landlord has incurred because the tenant ended or breached the tenancy agreement. As well the policy guideline says the amount in the tenancy agreement must be a genuine pre-estimate of the loss that may be incurred. I find that the Landlord has established grounds to show the liquidated damages claimed of \$575.00 meets the requirements as set out in the Policy guidelines as it was a genuine estimate of the re-rental fee and it is not a penalty. I find for the Landlord and award liquidated damages of \$575.00.

With respect to the Landlord claim of \$50.00 per month for April, May, June and July, 2011, I find that because the Landlord accepted the Tenants Notice to End Tenancy on March 15, 2011 and the Landlord accepted the agents new rental amount of \$1,250.00 the Tenant is not responsible for the drop in rental from \$1,300.00 to \$1,250.00 when

the unit was re-rented. The Landlord's claim for \$200.00 for loss of rental income is dismissed without leave to reapply.

As the Landlord did not provide proof that the utilities bill was unpaid or the amount of that bill, I find the Landlord has not established grounds to support their claim for \$34.08 in unpaid utilities and therefore I dismiss the Landlord's claim for unpaid utilities of \$34.08 without leave to reapply.

With respect to the repair cost of \$20.00 for the bathroom wall repair I find for the Landlord as the claim is agreed to by both the Tenant and the Landlord in the move out condition inspection report dated March 13, 2011.

As the Landlords have been successful in this matter, they are also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep a portion of the Tenant's security deposit in the amount of \$645.00 as full payment of the Landlord's claims. The Landlords' claims are as follows:

	Liquidated damages	\$575.00
	Wall repairs	\$ 20.00
	Filing Fee	\$ 50.00
	Subtotal	\$645.00
Less	Security Deposit	\$650.00
	Balance due to Tenant	\$ 5.00

### Conclusion

I order the Landlord to retain \$645.00 of the Tenant's security deposit as full settlement of the Landlord's claim.

I order the Landlord to return the balance of the Tenant's security deposit in the amount of \$5.00 forth with.

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*.

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Residential Tenancy Branch