



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNR MNSD MNDC FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Despite having been served with the application for dispute resolution and notice of hearing by registered mail on August 11, 2011, the tenants did not participate in the conference call hearing.

### Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

### Background and Evidence

The tenancy began on April 1, 2011 as a fixed-term tenancy to end on March 31, 2012. Rent in the amount of \$1350 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$675.

The tenants broke the lease, and did not give written notice to vacate. The tenants vacated on July 20, 2011. The tenants caused damage to the rental unit but did not do repairs before they vacated. They also left unpaid rent and utilities.

The landlord has claimed the following amounts:

- 1) \$2700 for unpaid rent and lost revenue for July and August 2011 – the landlord was unable to re-rent the unit for August 2011;
- 2) \$675 plus \$81 HST for breaking the lease – a clause in the tenancy agreement states, in part, that if the tenant breaks the lease, the tenant will pay as liquidated damages “the amount equal to ½ a months rent plus HST”;
- 3) \$1127.30 for cleaning, hauling and materials – the landlord had to do extensive cleaning and repairs, and haul away two full pick-up loads of garbage;
- 4) \$20.15 for a smoke detector – the tenants removed a new smoke detector; and
- 5) \$908.16 for replacing and installing new carpet.

The landlord provided receipts to support their claim.

### Analysis

In considering all of the evidence, I find that the landlord is entitled to all of the items claimed except the “broken lease payment.” The clause in the tenancy agreement dealing with liquidated damages does not specify a specific dollar amount. Furthermore, there is no authority under the *Residential Tenancy Act* for a landlord to charge HST. As the clause is vague and contrary to the Act, I find that it is void and unenforceable. I dismiss this portion of the landlord’s application.

As the landlord’s claim was mostly successful, they are entitled to recovery of the \$50 filing fee for the cost of their application.

### Conclusion

The landlord is entitled to \$4805.61. I order that the landlord retain the security deposit of \$675 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$4130.61. This order may be filed 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: November 15, 2011.

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Residential Tenancy Branch