



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### **Introduction,**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act*, for a monetary order for loss of income, liquidated damages, cost of carpet cleaning and repairs, the filing fee and to retain the security deposit in partial satisfaction of her claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Is the landlord entitled to a monetary order for loss of income, liquidated damages, cost of cleaning and the filing fee? Is the landlord entitled to the return of the security deposit?

### **Background and Evidence**

The tenancy started on October 01, 2011 for a fixed term of one year with an end date of September 30, 2012. Rent was \$1,200.00 due on the first day of each month. Prior to moving in the tenant paid a security deposit of \$600.00. The landlord filed a copy of the tenancy agreement which contains a clause that states as follows:

### **Liquidated Damages**

*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 \$575.00 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 tenant stated that on March 30, 2012, he gave the landlord written notice to end the tenancy effective April 30, 2012. The landlord filed a copy of this notice which is date stamped as received on March 30, 2012. The landlord testified that upon receiving the notice, she informed the female tenant that liquidated damages would be payable and she replied that she would check with her spouse and get back to the landlord. The male tenant confirmed by phone that the written notice was valid.

The landlord stated that after she received confirmation from the tenant, she started advertising for a new tenant on April 11, 2012, in the local newspaper and on line. The unit had two showings during the month of April. The landlord filed a copy of the advertisement which has a hand written date of April 20, 2012.

The landlord conducted a move out inspection on May 01, 2012 and found the unit to be in a clean and acceptable condition except for stains on the carpets and a half inch gouge in the kitchen laminate. The landlord filed a copy of the inspection report and a copy of an invoice dated June 22, 2012 in the amount of \$89.60 for the cost of stain removal. The landlord also filed an estimate to fix the gouge in the laminate in the amount of \$60.00 and stated that it was not yet done.

The landlord testified that a new tenant was found for July 01, 2012 and filed a copy of an invoice in the amount of \$560.00 as the cost of finding a new tenant. The tenant disagreed and stated that he drove by on June 25, 2012 and saw occupants inside the rental unit. The landlord argued that the persons that the tenant saw were cleaners and painters. The landlord did not file a copy of the new rental agreement to support her testimony that new tenants moved in on July 01, 2012.

The landlord is claiming the following:

1.	Liquidated damages	\$560.00
3.	Carpet cleaning	\$89.60
4.	Repair laminate	\$60.00
5.	Filing fee	\$100.00
	Total	<b>\$3,209.60</b>

### **Analysis**

#### 1. Liquidated damages - \$560.00

Pursuant to section 4 of the *Residential Tenancy Policy Guideline*, a liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

In this case, a term of the tenancy agreement states that if the tenancy ends prior to the end date of the fixed term tenancy, the tenant will pay liquidated damages of \$575.00 which represents the cost of re-renting the unit. The tenant accepted the above term by signing the agreement. Therefore I find that the tenant must pay liquidated damages to the landlord in the amount of \$560.00.

2. Loss of income for May and June 2012 - \$2,400.00

Section 45 of the *Residential Tenancy Act*, states that 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, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month that rent is payable under the tenancy agreement.

By ending the tenancy prior to the end date of the fixed term, the tenant breached the agreement and therefore the landlord is entitled to damages in an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement.

As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenancy could legally have ended the tenancy. In all cases, the landlord's claim is subject to the statutory duty to mitigate the loss by making attempts to re-rent the unit.

Section 7(2) of the *Residential Tenancy Act*, states that a landlord who claims compensation for loss that results from the tenant's non compliance with the tenancy agreement must do whatever is reasonable to minimize the loss.

Based on the testimony of both parties, I find that the tenant gave notice on March 30, 2012. The landlord started advertising no earlier than April 11, 2012. The date on the copy of the advertisement as filed by the landlord is April 20, 2012. The date that the carpet was cleaned was June 22, 2012. The landlord also testified that the unit was being painted in the month of June. Accordingly, I find that since painting and carpet cleaning were done at the end of June, the unit was not ready to be rented prior to July 01, 2012.

Based on the evidence in front of me, I find that the landlord did not advertise immediately upon receipt of the notice to end tenancy and also did clean the stains on the carpet and paint the unit, until late June. Accordingly, I find that the landlord did not make sufficient attempts in the month of April, to advertise the availability of the rental unit and did not have the unit ready for occupation prior to July 01, 2012.

In addition, the move in date of the new tenant is not clear as both parties offered contradictory testimony. As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim.

When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case, the tenant stated that he saw the unit occupied at the end of June while the landlord stated the new tenant moved in on July 01. In the absence of evidence to support the landlord's version of events, I find that the landlord is unable to prove that a new tenant moved in on July 01, 2012 and that the unit was vacant until this date.

Based on all of the above, I find that the landlord is not entitled to loss of income for the months of May and June 2012.

3. Carpet cleaning - \$89.60

The landlord filed photographs, invoices and a copy of the move out inspection report to support her claim for the cost of cleaning the carpet. Accordingly, I find that the landlord is entitled to the cost of cleaning in the amount of \$89.60.

4. Repair laminate - \$60.00

The landlord filed an estimate of the cost of this repair and testified that the laminate was not repaired prior to the new tenant moving in. Accordingly, I find that the landlord has not established a claim for the cost of repair.

5. Filing fee - \$100.00

The landlord has established only a portion of her claim which was under \$5,000.00 and warranted a filing fee of \$50.00. Accordingly, I award the landlord \$50.00 towards the recovery of the filing fee

Overall the landlord has established a claim as follows:

1.	Liquidated damages	\$560.00
3.	Carpet cleaning	\$89.60
4.	Repair laminate	\$0.00
5.	Filing fee	\$50.00
	<b>Total</b>	<b>\$699.60</b>

I order that the landlord retain the security deposit of \$600.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$99.60. This order may be filed in the Small Claims Court and enforced as an order of that Court.

**Conclusion**

I grant the landlord a monetary order in the amount of **\$99.60**.

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: July 10, 2012.

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Residential Tenancy Branch