



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOLLYBURN PROPERTIES LIMITED  
and [tenant name suppressed to protect privacy]

## **DECISION**

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

### **Introduction**

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order for the cost or repairs, for liquidated damages when the tenant ended the fixed term tenancy prior to the end date and for the recovery of the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of the claim.

Service of the hearing document, by the landlord to the tenant, was done in accordance with section 88 of the *Residential Tenancy Act*. A copy of the application for dispute resolution, the notice of hearing and the evidence package was served on the tenant by registered mail on December 19, 2012, to the address provided by the tenant. The landlord filed a tracking number.

Despite having been served the notice of hearing, the tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Is the landlord entitled to a monetary order for the cost or repairs, for liquidated damages and for the recovery of the filing fee. Is the landlord entitled to retain the security deposit?

### **Background and Evidence**

The tenancy started on July 01, 2012 for a fixed term of one year. The monthly rent was \$1,375.00 due on the first of each month. Prior to moving in the tenant paid a security deposit of \$687.50.

The landlord filed a copy of the tenancy agreement. The tenancy agreement contains a clause that states that in the event the tenant ends the fixed term tenancy before the end of the original term, the tenant is required to pay liquidated damages of \$805.33 to cover administrative costs of re-renting the unit.

On October 23, 2012, the tenant served the landlord with a one month notice to end the tenancy effective November 30, 2012. The tenant also included his forwarding address in the notice to end tenancy. The tenant moved out on November 29, 2012.

A move out inspection was conducted and the landlord also filed a copy of the move in and move out inspection report. The report indicates that one mirror door was broken as noted during the move out inspection. The notes in the report refer to another broken mirror which was repaired on September 26, 2012. The landlord filed copies of two invoices for the repair of mirror doors, one dated April 07, 2012 and the other dated September 26, 2012. The landlord is claiming the cost of repairing both doors.

The landlord is also claiming liquidated damages in the amount of \$805.33 plus the filing fee of \$50.00.

### **Analysis**

Section 45(2) 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:

- (a) Is not earlier than one month after the date the landlord receives the notice
- (b) Is not earlier than the date specified in the tenancy agreement as the end of the tenancy and
- (c) Is the day before the day in the month on which the tenancy is based that rent is payable under the tenancy agreement.

Based on the undisputed sworn testimony of the landlord, I accept the landlord's evidence in respect of the claim. In this case, the tenant gave notice to end the tenancy effective November 30, 2012 which is prior to the end date of the fixed term.

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. In this case, by signing the tenancy agreement the tenant agreed to pay \$805.33 as the cost to re-rent the unit in the event he ended the tenancy prior to the end date of the fixed term. Therefore, I find that the landlord is entitled to his claim of **\$805.33** for liquidated damages.

I find that the landlord has filed sufficient evidence to support his claim to fix one mirror door in the amount of \$299.79. However the landlord has not provided proper evidence for his claim for the cost of repairing the second mirror door. The invoice is dated prior to the start of tenancy. Therefore I award the landlord the cost of repairs for one door in the amount of **\$299.79**.

Since the landlord has proven his case, I find that he is also entitled to the recovery of her filing fee, in the amount of **\$50.00**.

Overall the landlord has established a claim of **\$1,155.12**. I order that the landlord retain the security deposit of **\$687.50** 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 **\$467.62**. 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 for the amount of **\$467.62**.

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: March 12, 2013

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Residential Tenancy Branch

