



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD MNR MNDC MND O FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on November 22, 2012, by the Landlord to obtain a Monetary Order for: unpaid rent or utilities; to keep the security deposit; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; for damage to the unit, site, or property; for other reasons; and to recover the cost of the filing fee from the Tenants for this application.

The Landlord affirmed that each Tenant was served copies of the application for dispute resolution and notice of hearing documents by registered mail on November 28, 2012. Canada Post tracking receipts were provided in the Landlords' evidence. Based on the submissions of Landlord I find that each Tenant was sufficiently served notice of this proceeding, in accordance with the Act, and I continued in the Tenants' absence.

### Issue(s) to be Decided

Should the Landlord be awarded a Monetary Order?

### Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: a computer advertisement of the rental unit; tenant payment ledger; move-in and move-out condition inspection report form; receipts for repairs and cleaning; the tenancy agreement; and Canada Post receipts.

The Tenants did not submit documentary evidence in response to the Landlord's claim.

The Landlord affirmed that the Tenants and their co-signor entered into a written fixed term tenancy agreement that began August 1, 2012 and was scheduled to end July 31, 2012. On July 13, 2012, the Tenants were granted early occupation of the unit and signed the move-in condition inspection report form agreeing to the condition of the unit. On July 30, 2012 the Tenants paid \$775.00 as the security deposit.

The Landlord advised that the Tenants failed to pay the September 2012 rent and they informed the Landlord they were moving out. On September 5, 2012, the Co-signor

attended the Landlord's office and advised that the unit had been vacated. The Co-signor provided the Landlord with the Tenant's forwarding address on September 5, 2012. The rental unit keys were never returned to the Landlord. A move out inspection was conducted on September 10, 2012 in the absence of the Tenants who had left the unit dirty and with some damage as supported by the Landlord's evidence.

The Landlord stated that on September 5, 2012, they listed the unit for rent on the internet and their website. After dropping the price they were able to re-rent the unit effective December 1, 2012 for \$1,300.00 per month. The Landlord is seeking compensation for loss of rent for September, October and November of \$4,650.00.

The Landlord claimed \$775.00 as an early termination fee to cover their costs for re-renting the unit prior to the end of the tenancy. Upon further clarification the Landlord advised that this fee is the same as liquidated damages which is used to cover costs incurred by the owner who has to pay the property management company to advertise, show the unit, and screen tenants to get the unit re-rented. This was agreed to by the Tenants as it was written in the tenancy agreement.

The Landlord is also seeking to recover the costs to repair the rental unit door jams, door knob, various doors, remove garbage and debris left by the Tenants, and cleaning of the entire unit in the amount of \$625.20 (\$375.20 + \$250.00). The Landlord advised that these items are supported by the receipts provided in their evidence.

### Analysis

Upon consideration of the evidence before me, in the absence of any evidence from the Tenants who did not appear, despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Landlord and corroborated by their documentary evidence.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Section 45(2)(b) of the Act stipulates 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 the date specified in the tenancy agreement as the end of the tenancy.

In this case the Tenants ended the tenancy by vacating the property September 5, 2012, without providing notice and prior to the end of the fixed term period which was July 31, 2013. The Landlord was not able to re-rent the unit until December 1, 2012. Based on the foregoing, I find the Tenants breached section 45(2)(b) of the Act causing the Landlord to suffer a loss of rental income for September, October, and November 2012 in the amount of \$4,650.00 (3 x \$1,550.00). Accordingly, I award the Landlord loss of income in the amount of **\$4,650.00**.

The tenancy agreement included an "EARLY TERMINATION" clause which I have determined to be a liquidated damages clause. 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.

I accept the Landlord's testimony that the half month's rent, or \$775.00, as provided for in the early termination clause, is reasonable as the owner had to pay their property management company for services to advertise, show the unit as often as possible, and to conduct checks on potential tenants in order to re-rent the unit. Accordingly, I award the Landlord liquidated damages in the amount of **\$775.00**.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Based on the aforementioned and the documentary evidence, I find the Tenants breached sections 32(3) and 37(2) of the Act, leaving the rental unit unclean and with some damage at the end of the tenancy. The Landlord paid a contractor \$375.20 to conduct repairs and remove debris and \$250.00 to have the rental unit cleaned in order to re-rent the unit. Accordingly, I award the Landlord damages in the amount of **\$625.20** (\$375.20 + \$250.00).

The Landlord has been successful with their application; therefore I award recovery of the **\$100.00** filing fee.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to either return the Tenants' security deposit or file for dispute resolution no later than September 20, 2012. The Landlords have not returned the deposit and did not file their application until November 22, 2012.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord must pay the tenant double the security deposit.

Loss of Rental Income	\$4,650.00
Liquidated Damages	775.00
Damages	625.20
Filing Fee	<u>100.00</u>
<b>SUBTOTAL</b>	<b>\$6,150.20</b>
<b>LESS:</b> Double Security Deposit 2 x \$775.00	-1,550.00
Security Deposit Interest \$0.00	<u>0.00</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$4,600.20</u></b>

### Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$4,600.20**. This Order is legally binding and must be served upon the Tenants.

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 01, 2013

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Residential Tenancy Branch

