



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BAYSIDE PROPERTY SERVICES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MNDC, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for compensation for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on December 16, 2013. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Is there a loss or damage and if so how much?
4. Is the Landlord entitled to compensation for the loss or damage and if so how much?
5. Is the Landlord entitled to keep the Tenant's security?

### Background and Evidence

This tenancy started on February 5, 2013 as a fixed term tenancy with an expiry date of February 28, 2014. Rent was \$795.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$395.00 on February 5, 2013. The Landlord said the Tenant gave the Landlord written notice on November 1, 2013 that she was moving out of the rental unit on November 30, 2013. The Landlord said a move in condition inspection was completed and signed on February 5, 2013 and a move out inspection was completed on November 30, 2013.

The Landlord continued to say her application is for \$395.00 in liquidated damages which represent the cost the Landlord incurred to rent the unit to new tenants. These costs include advertising, administration expenses, showing the unit and maintaining the Landlord's web site. The Landlord said the liquidated damage clause is in the tenancy agreement addendum as clause # 1 and the Tenant signed the addendum agreeing to pay liquidated damages if the Tenant ended the tenancy before the end of the fixed term of the tenancy. The liquidated damage clause states the Tenant is responsible to pay ½ a month's rent if the tenancy agreement is broken prior to the end of the fixed term or February 28, 2013 in this case.

The Landlord said they have applied for \$395.00 in liquidated damages and \$50.00 to recover the filing fee. As well the Landlord said they are not applying for any unpaid rent for the remainder of the fixed term tenancy, which the Landlord believes they may be entitled to.

The Tenant said the unit was left in good condition and there was no damage so the caretaker L.Z. said the Landlord would return the Tenant's security deposit. Then the Tenant said the Landlord came to talk to her and said they were not returning the security deposit because of the liquidated damage clause. The Tenant said she believes the Landlord should return her security deposit as they said they would.

The Landlord said there was no damage to the unit, but after the move out inspection was completed the caretaker L.Z. realized this was a fixed term tenancy and the fixed term was broken, therefore the liquidated damage clause was in effect.

### Analysis

It appears there has been some miscommunication between the Landlord and the Tenant in this situation as the Landlord did communicate that they would return the Tenant's security deposit and then realized they had made a mistake because the Tenant had broken a fixed term tenancy. Mistakes happen and that is why written tenancy agreements are done. A written agreement clarifies the agreement between the parties and is the reference point used in disputes unless a new written agreement is made. In this situation the Landlord may have verbally indicated that because there was no damage the Tenant would receive her security deposit back, but the written agreement states that if the Tenant ended the fixed term tenancy prior to February 28, 2014 the Tenant is responsible to pay the Landlord ½ a month's rent or \$395.00. Both parties agreed and signed to the liquidated damages clause; therefore I find that the Tenant is responsible for the liquidated damages as stated in the addendum of the tenancy agreement dated February 4, 2013. I award the Landlord \$395.00 in liquidated damages.

As the Landlord has been successful in this matter, she is 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 the Tenant's security deposit in full payment of the liquidated damages. The Landlord will receive a monetary order for the filing fee of \$50.00.

### Conclusion

I order the Landlord to retain the Tenant's security deposit of \$395.00 as full satisfaction of the liquidated damages clause in the addendum of the tenancy agreement.

A Monetary Order in the amount of \$50.00 has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: February 25, 2014

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Residential Tenancy Branch

