



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Horst Dammholz Realty Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This is an application filed by the landlord for a monetary order for damage to the unit, site or property, for money owed or compensation for damage or loss, to keep all or part of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order?  
Is the landlord entitled to retain the security deposit?

### Background and Evidence

This tenancy began on May 1, 2013 on a fixed term tenancy ending on April 30, 2014 and then thereafter on a month to month basis as shown by the signed tenancy agreement. The tenancy ended on January 31, 2014. The monthly rent was \$1,595.00 payable on the 1<sup>st</sup> of each month and a security deposit of \$797.50 was paid on May 7, 2013.

The tenants provided their forwarding address by email instead of in writing on February 5, 2014 as confirmed by the landlord in his submitted documentary evidence.

The landlord seeks a monetary claim of \$797.50 which consists of \$500.00 for liquidated damages as the tenants have prematurely ended the tenancy and \$297.50 for damages and cleaning to the rental unit. The landlord states that the tenants ended

the tenancy on January 30, 2014 as opposed to their fixed term tenancy ending on April 30, 2014. The tenant confirmed ending the tenancy prematurely and states that he was the last tenant to vacate the rental unit on February 3, 2014 when new tenants took over the rental. Both parties confirmed that new tenants rented the unit on February 3, 2014. The tenants state that the balance of the rental agreement was assigned. The landlords dispute this stating that the tenants abandoned the rental unit and had new tenants enter into a new tenancy agreement on February 3, 2014. The landlord relies on the submitted photographs which showed the condition of the rental unit at the end of this tenancy. The tenant confirmed in his direct testimony that there was a hole in the wall as shown by the photographs. The landlord also states that the rental unit was left very dirty that required cleaning. The tenant confirmed in his direct testimony that the photographs accurately reflected the condition of the rental, but states that the rental was cleaned by the new tenants and that he had patched the hole in the wall. The landlord states that he is unaware of any repairs made by the tenant. The landlord clarified in his direct testimony that no costs were incurred for cleaning and that no repairs have been made by the landlord. The landlord has provided a copy of the signed tenancy agreement which states in section #5 that, "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 the above, or any subsequent fixed term. The tenant will pay to the landlord the sum of \$500.00 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."

### Analysis

I accept the evidence provided by both parties and find that the tenants did prematurely end the tenancy on February 3, 2014 as opposed to the agreed upon fixed term of April 30, 2014. Although there is no negligible loss to the landlord other than his efforts to re-rent the unit, the tenants did breach the fixed term tenancy. Residential Tenancy Branch Policy Guideline #4(Liquidated Damages), states,

" If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent."

As such, I find that the landlord has established a claim for liquidated damages of the specified amount of \$500.00 as provided for in the signed tenancy agreement.

As for the monetary claim for \$297.50 for cleaning and damages, I find that the landlord has failed to provide sufficient evidence to satisfy me of this claim. In the landlord's direct evidence he stated that no repairs have yet been made and that he is unable to provide any evidence of repair costs required. The landlord has also failed to provide sufficient evidence that the landlord suffered a loss for cleaning of the rental unit after the tenants vacated the unit. The tenant disputed this portion of the claim stating that the new tenants cleaned the unit themselves and that the landlord did not suffer any losses. This portion of the landlord's monetary claim is dismissed.

The landlord has established a total monetary claim of \$500.00. The landlord is entitled to recovery of the \$50.00 filing fee. I order that the landlord retain \$550.00 from the \$797.50 security deposit in satisfaction of this claim. I further order that the landlord return the outstanding balance of \$247.50. As such, I grant the tenants a monetary order for the balance owed of \$247.50. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

#### Conclusion

The landlord may retain \$550.00 from the security deposit.  
The tenants are granted a monetary order for \$247.50.

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: May 23, 2014

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Residential Tenancy Branch

