



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant: MNR MNDC FF  
For the landlord: MNSD MNDC FF

### Introduction

This hearing was convened as a result of the cross applications of the parties under the *Residential Tenancy Act* (the “*Act*”).

The tenant applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for the cost of emergency repairs, and for the recovery of the filing fee.

The landlord applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to keep all of part of the tenant’s security deposit.

The tenant, the landlord, and an agent for the landlord (the “agent”) attended the hearing. The parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

The tenant’s documentary evidence was excluded from the hearing as it was submitted late and not in accordance with the Rules of Procedure. The only document relied upon by the landlord was the written tenancy agreement, which both parties confirmed they had before them during the hearing, and of which was served on the Residential Tenancy Branch in accordance with the Rules of Procedure.

### Preliminary and Procedural Matter

During the hearing, the tenant was advised that his application for monetary compensation was being refused, pursuant to section 59(5)(c) of the *Residential Tenancy Act (Act)*, because his application for dispute resolution did not provide sufficient particulars of his claim for compensation, as is required by section 59(2)(b) of the *Act*. I find that proceeding with the tenant's monetary claim at this hearing would be prejudicial to the landlord, as the absence of full particulars including a monetary breakdown of the amount being claimed, makes it difficult, if not impossible, for the landlord to adequately prepare a response to a claim against them. As a result, the tenant's application is **dismissed with leave to reapply**.

As a result of the above, only the landlord's request for monetary compensation for "breaking the lease" of \$892.50, and the landlord's request to retain the tenant's security deposit will be considered.

### Background and Evidence

A copy of a fixed term tenancy agreement was submitted in evidence. The parties agreed that the tenancy began on November 1, 2013, and the tenant vacated the rental unit on January 15, 2014. The tenant paid a security deposit of \$850.00 which the landlord continues to hold.

The landlord has claimed \$892.50 which is "\$850.00 plus GST" according to the landlord, based on the tenant breaching a fixed term tenancy. The landlord referred to the following section of the tenancy agreement during the hearing:

"2a...If the terms of this lease is broken, such as if , you fail to pay rent on time and we are force to terminate the tenancy, the tenants will pay the fees for re-renting the premises which is ½ of one months plus GST TAX, as well as any lost revenue until the new tenants have taken over payment of the rent..."

[reproduced as written]

### Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

I find the wording described above included in the tenancy agreement is not enforceable. The landlord neglected to include the word “rent” in the portion of the section 2a of the tenancy agreement reproduced above which reads in part “...½ of one months plus GST TAX...” and failed to indicate a specific amount. By failing to indicate a specific amount as liquidated damages agreed upon by the parties in writing at the start of the tenancy, I find that this condition is not enforceable under the *Act*. Given the above, I dismiss this portion of the landlord’s application.

Regarding the tenant’s security deposit, the landlord already has a monetary order in the amount of \$1,700.00 dated January 15, 2014 which remains unpaid according to the landlord. Pursuant to section 38(3) of the *Act*, the landlord is authorized to retain the full security deposit of \$850.00 in partial satisfaction of that monetary order. Section 38(3) of the *Act* reads in part:

**Return of security deposit and pet damage deposit**

**38** (3) A landlord may retain from a security deposit or a pet damage deposit an amount that

**(a) the director has previously ordered the tenant to pay to the landlord, and**

**(b) at the end of the tenancy remains unpaid.**

**[my emphasis added]**

Based on the above, I find that landlord already had the authority to retain the tenant’s \$850.00 security deposit towards the unpaid monetary order in the amount of \$1,700.00 dated January 15, 2014 as the tenant vacated the rental unit on January 15, 2014.

Conclusion

The landlord’s application is dismissed, without leave to reapply.

The tenant’s application has been refused pursuant to sections 59(5)(c) and 59(2)(b) of the *Act*. The tenant is at liberty to reapply. I note that this decision does not extend any applicable time limits under the *Act*.

I do not grant either party the recovery of their filing fee.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 16, 2014

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Residential Tenancy Branch

