



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF

### **Introduction:**

The landlord applies for dispute resolution, and requests a monetary award for loss of rental income, liquidated damages, and costs of cleaning and damage following the premature ending of the tenancy. The landlord also seeks an order to retain the security deposit.

The tenant failed to attend the hearing. I accept that the tenant was personally served with notice of this hearing, and the landlord's evidence.

### **Issues to be decided:**

Is the landlord entitled to the compensation sought from the tenant?

Is the landlord entitled to retain the security deposit?

### **Background and Evidence:**

1. This tenancy was for a fixed term beginning May 1, 2013 and ending April 30, 2014. A security deposit was paid April 20, 2013 in the sum of \$737.50. Monthly rent was \$1,475.00.
2. The tenant also agreed to rent a parking spot from the landlord for \$50.00 per month, and paid a deposit of \$100.00 with respect to that parking agreement.
3. The tenant moved out of the premises prior to the end of the fixed term. The premises were found abandoned on March 13, 2014, and the keys to the unit were found in the mail slot.
4. No rent was paid after February, 2014 by the tenant. The landlord secured new tenants who moved in May 1, 2014, after the premises were cleaned and repaired. The landlord seeks loss of rent from the tenant for March and April.
5. The premises were left in an unclean condition, and the landlord's staff spent about 6.5 hours cleaning, at an estimated cost to the landlord of \$300.00.
6. There was damage to the kitchen arborite, and the landlord was required to repair and match the other arborite in the washroom. The landlord's staff did this repair, at an estimate cost for labour and materials of \$300.00.
7. The carpets in the unit were left uncleaned, and were cleaned by the landlord, at a cost of \$89.25.
8. The landlord's staff removed garbage from the unit and also items belonging to the tenant, including a couch. The items that were not garbage were placed into

storage. Although the landlords' actual costs exceed this sum, the landlord seeks \$300.00, as claimed in the landlord's application.

9. The tenancy agreement included a clause specifying that in the event that the tenant vacated the premises before the end of the fixed term the tenant shall pay the landlord the sum of \$805.33 as liquidated damages and not as a penalty. The agreement clarifies that liquidated damages are an agreed pre-estimate of the landlord's cost of re-renting the rental unit. This sum is claimed by the landlord.

**Analysis:**

I accept the landlord's testimony that the parking agreement between these parties is separate from the tenancy agreement, and that I have no authority over any dispute regarding that agreement, including the landlord's claim to retain the parking deposit.

The tenant has breached his fixed term tenancy agreement, which required him to pay rent for the month of March and April. I accept that the landlord's took reasonable steps to mitigate the loss of rent, and found a tenancy for May 1. The tenant is liable for the loss of rent income to the landlord for March and April, in the sum of \$2,950.00.

The tenant was required to leave the premises in a clean condition and failed to do so. Having viewed the landlord's photographs, I find the landlord's estimates as to the amount of cleaning needed to be reasonable, and the sum of \$300.00 is awarded as claimed.

The tenant left the kitchen arborite in a damaged condition, which required repair and matching work in the washroom. I find the landlord's estimates for labour and materials to be reasonable, and the sum of \$300.00 is awarded as claimed.

The tenant failed to clean the carpets, and I accept that the landlord incurred a cost of \$89.25 for this work. This sum is awarded to the landlord.

The tenant failed to remove garbage and other possessions, and the landlord's staff was required to do so. I accept that the landlords' actual costs exceed \$300.00, but the landlord seeks only \$300.00, and this sum is awarded.

The landlord calculates the liquidated damages based upon a review of all the landlord's rental units and the average administrative costs to place new tenants in cases of breach of a fixed term, including advertising and showing of the premises. The sum of \$805.33 is a sum that applies to all of these units, regardless of the actual rent of the unit. I find this clause in the tenancy agreement to be an enforceable liquidated damages provision. I accept the clause references a genuine pre-estimation of the landlord's cost to place new tenants, where the tenant breaches the tenancy agreement by terminating the tenancy early. The sum of \$805.33 is awarded.

As the landlord is successful with this claim, I also award the recovery of the \$50.00 filing fee from the tenant.

The total sum awarded to the landlord is \$4,794.58. The security deposit including accrued interest to the date of this hearing, totals \$737.50. As this sum is less than the award made, retention is appropriate, per section 38 of the Act.

**Conclusion:**

I order (pursuant to section 38(1) of the Act) that the full amount of the security deposit of \$737.50 be retained by the landlord, in partial satisfaction of the monetary award noted above.

I further order that the remaining balance of the award due to the landlord, equalling \$4,057.08, be paid immediately by the tenant to the landlord.

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: June 05, 2014

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Residential Tenancy Branch