



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Coldwell Banker Horizon Realty  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MND, MNSD, FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order for unpaid rent, damage to the unit, and to recover the RTB filing fee.

Both the landlord and one of the tenants attended the teleconference hearing and gave affirmed evidence.

The property owner is represented by a property manager through his firm. Between the time of the Landlord's Application for Dispute Resolution and the hearing, the property manager transferred to a different firm. Accordingly, I have amended the name of the Applicant/Landlord to the new property management firm.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?  
Is the landlord entitled to a monetary order for damage to the unit?

### Background and Evidence

The parties agree the tenancy started October 1, 2013 and was for a fixed term ending September 30, 2014. The tenants were obligated to pay rent of \$1,800.00 monthly in advance on the first day of the month. The tenants also paid a security deposit of \$900.00 and a pet deposit of \$900.00.

The tenancy agreement names two tenants. The landlord gave evidence that the male tenant moved out in late December 2013 or early January 2014, while the female tenant provided no real notice and moved out in the first week of February 2014. The landlord states that no rent was paid for the month of February 2014.

The tenancy agreement was signed by both tenants and the landlord on September 6, 2013. There is an addendum to the tenancy agreement that was signed by the landlord and the female tenant also on September 6, 2013 (the "Addendum"). The Addendum contains the following term (the "Addendum Term"):

- Tenant agrees to forfeit their security deposit should they break their lease. This would mean that the tenant moves out with or without notice, prior to the conclusion of the date indicated on the tenancy agreement. This addendum point would be voided should there be an agreement to end tenancy.

The landlord gave evidence that there was no agreement to end the tenancy prior to the end of the fixed term. The landlord's evidence is that the Addendum Term is intended to be liquidated damages for breach of the fixed term. It is intended to cover the landlord's costs of finding a new tenant. The landlord gave evidence that the property management company charges the landlord a flat fee of one half month's rent to find new tenants.

The male tenant notes that he did not sign the Addendum, however he was present in the room when the female tenant signed it. He says he did not really agree with it at the time, but the female tenant said she would sign it. He does not recall being asked to sign.

The landlord says that they normally take prospective tenants through the Addendum before they sign the tenancy agreement, since they will not enter into a tenancy with tenants who will not sign the Addendum. His position is that the male tenant is equally bound by the Addendum although he did not sign it.

The landlord gave evidence that he started to advertise the rental unit to find new tenants as soon as the female tenant gave notice, in January 2014. They advertised the rental unit on various rental websites, and found new tenants for March 1, 2014.

The landlord seeks compensation of \$1,800.00 for lost rental income for the month of February 2014, on the basis that the female tenant moved out in the first week of the month and did not provide one month's notice. The landlord also seeks \$900.00 on the basis of the Addendum Term.

The male tenant agrees that the landlord should be compensated for the month of February 2014, although he notes that he moved out earlier and so he is being held to account for someone else's debt.

The landlord also seeks compensation for certain cleaning and repair costs. The landlord incurred costs of:

- \$248.85 for carpet cleaning
- \$137.46 for lock replacement because the female tenant did not return keys
- \$378.95 to replace a section of carpet that had burn marks on it
- \$336.00 to patch and paint various areas on walls throughout the house

The tenant agrees that all of the above cleaning and repair costs are appropriate and the landlord is entitled to compensation. The tenant's only point of disagreement is with the landlord's claim for liquidated damages of \$900.00.

### Analysis

I find the landlord is entitled to be compensated for lost rental income for the month of February 2014 because the tenants did not give proper notice and moved out during the first week of February 2014. I find the landlords took appropriate steps to mitigate their losses. I set the landlords' compensation for lost rental income at \$1,800.00.

I accept the landlord's evidence that they incurred the above-noted cleaning and repair costs. I agree with the submissions of the parties that those costs are reasonable and the landlord is entitled to be compensated for those costs, which total \$1,101.26.

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, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

The landlord has indicated that the Addendum Term is intended to be a liquidated damages clause. However, the Addendum Term "Tenant agrees to forfeit their security deposit should they break their lease" is phrased as though it were a penalty. I find that a tenant reading such a term would likely understand it to be a penalty and not a genuine pre-estimate of costs. For that reason, I find that the tenants did not agree to a liquidated damages clause and the term is not enforceable. I dismiss the landlord's claim for liquidated damages.

The total amount due the landlord is \$2,901.26. I order that the landlord retain the security deposit of \$900.00 and pet deposit of \$900.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,101.26.

This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order of \$1,101.26. The landlord is also entitled to retain the security deposit and pet deposit.

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: July 09, 2014

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Residential Tenancy Branch

