



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order for unpaid rent; damage to the rental unit; money owed or compensation for loss or damage under the Act, Regulation, or tenancy agreement; and to recover the RTB filing fee.

The landlord attended the teleconference hearing and gave evidence, however the tenants did not attend. The landlord gave evidence that he personally served the tenants on April 4, 2014. I find the tenants were properly served.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The tenancy agreement signed by the parties on August 7, 2013 indicates the tenancy started on September 1, 2013 and was for a fixed term ending August 31, 2014. The tenants were obligated to pay rent of \$795.00 monthly in advance on the first day of the month. The tenants also paid a security deposit of \$397.50.

The landlord gave evidence that the tenants did not pay rent of \$795.00 that was due March 1, 2014 and were therefore evicted. The tenants vacated the rental unit on March 23, 2014. The landlord gave evidence that they advertised for new tenants starting on about March 24, 2014 but did not find new tenants until May 1, 2014. The landlord also says that various cleaning and repairs were necessary.

The landlord's claim is as follows:

1	March 2014 rent	795.00
2	NSF fee for March 1, 2014	25.00
3	Liquidated damages	700.00
4	April 2014 rental loss	795.00
5	Repair of broken bathroom door & suite entrance door trim	125.00
6	New bathroom cabinet	44.76
7	Suite cleaning	300.00
8	Drape cleaning	40.00
9	Filing fee	50.00
	<i>Total claim</i>	<i>2,874.76</i>

The landlord gave evidence the tenancy agreement provides for a \$25.00 late fee at clause 10.

The landlord gave evidence the tenancy agreement contains a liquidated damages clause which reads as follows:

5. Liquidated Damages. If the tenant breaches a material term of this Agreement that causes the landlord to end the tenancy before the end of any fixed term, or if the tenant provides the landlord with notice, whether written, oral, or by conduct, of an intention to breach this Agreement and end the tenancy by vacating, and does vacate before the end of any fixed term, the tenant will pay to the landlord the sum of \$700.00 as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit. Payment of such liquidated damages does not preclude the landlord from claiming future rental revenue losses that will remain unliquidated.

The landlord gave evidence that the costs associated with re-renting the rental unit include showing the suite to prospective tenants, doing credit and reference checks, move-in and move-out inspections, and doing repair and maintenance such as painting touch-ups to make the unit more desirable to prospective tenants. The work is done by the property manager (who is on salary) or the owner himself.

The landlord gave evidence that there was damage to the suite door and the bathroom door. He provided photographs of the damage and a receipt for \$125.00 for repair and painting of the doors.

The landlord gave evidence that the bathroom cabinet was damaged by cigarette burns and had to be replaced. He provided photographs of the damage and a receipt for the replacement cabinet.

The landlord gave evidence that the tenants did not do any cleaning when they moved out. He says the two caretakers spent a total of 12 hours at \$25.00 per hour cleaning the rental unit, for a total claim of \$300.00. The landlord provided photographs to confirm the rental unit was not clean, and a receipt in support of the claim. He says that the caretakers also washed and re-hung the drapes; he claims \$40.00 for drape cleaning.

### Analysis

I accept the landlord's evidence that the tenants did not pay rent for March 2014. I find the landlord is entitled to be compensated for unpaid rent of \$795.00.

I find the tenants' failure to pay rent resulted in their eviction. The landlord claims a rental loss for the month of April 2014 since he was unable to place suitable new tenants until May 1, 2014. I find the landlord met his duty to mitigate his loss by promptly advertising the rental unit. I find the landlord is entitled to compensation for a rental loss \$795.00 for the month of April 2014.

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.

In this case, the liquidated damages clause is intended to compensate the landlord for losses resulting from the costs of re-renting the rental unit after a tenant breach. The cost of re-renting a rental unit to new tenants is part of the ordinary business of a landlord. Throughout the lifetime of a rental property, a landlord must engage in the process of re-renting to new tenants numerous times. However, one important reason why landlords enter into fixed-term tenancy agreements is to attempt to limit the number of times the landlord must incur the costs of re-renting.

I find it is more likely than not that, when a tenant breaches a fixed term tenancy agreement resulting in an early end to the tenancy, the landlord incurs the costs of re-renting one additional time than they would have without the breach. For that reason, I

find there is a loss to the landlord associated with such a breach. The next question is whether the amount specified (\$700.00) is a genuine pre-estimate of that loss.

The landlord identified his re-renting costs largely in terms of time he (the owner) or the property manager spent showing the suite, doing checks, and inspections. These are apparently not out-of-pocket costs, since the owner would not be paying himself and since the property manager is on salary. The landlord also identified the costs of making the rental unit very clean and touching up paint, but no costs associated with such activities were put into evidence.

It is therefore difficult to see the connection between the set amount of \$700.00 and re-renting costs; \$700.00 appears to be an arbitrary amount. Since I am unable to conclude that \$700.00 is a genuine pre-estimate of the identified loss, I cannot uphold the liquidated damages clause. The landlord's claim for \$700.00 is therefore dismissed.

The landlord's claims for repair and cleaning are well-supported, and I find the landlord is entitled to the compensation claimed.

In summary, I accept the landlord's claim as set out above with the exception of the liquidated damages claim. The total amount due the landlord is \$2,174.76. I order that the landlord retain the security deposit of \$397.50 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,777.26. 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 for \$1,777.26. The landlord is also entitled to retain the security 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: August 13, 2014

