



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Cedar Street Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC FF

### Introduction

This hearing dealt with the landlord's application for monetary compensation. Two agents for the landlord and the tenant participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

### Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

### Background and Evidence

The tenancy began on October 1, 2013 as a fixed-term tenancy to end on October 1, 2014. The addendum to the tenancy agreement contains a clause that indicates as follows:

If the Tenant(s) are evicted for breach of tenancy agreement or the tenancy agreement is broken by the Tenant, the Tenant may be subject to a liquidated damages fee for costs incurred to re-rent the unit. The liquidated damages fee is estimated to be \$800.00.

The tenancy ended on April 30, 2014, when the tenant moved out early. The landlord has claimed \$800 in liquidated damages, plus \$40 which the landlord stated represents the GST added on to the bill, which the landlord did not include in the liquidated damages pre-estimate at the time.

The landlord stated that the liquidated damages amount was calculated based on the fee, equivalent to 50 percent of the monthly rent, that the landlord always charges the owner whenever the landlord places a new tenant. Later in the hearing the landlord stated that they do not charge the owner if a tenant breaches the lease – in these circumstances, the landlord absorbs the loss.

### Analysis

I find that the landlord is not entitled to the amount claimed.

I find that the amount of \$800, or \$840 including GST, is not a genuine pre-estimate of the costs of re-renting. A liquidated damages clause should set out a precise amount, not an “estimate.” The landlord’s additional claim for \$40 in GST further indicates that the landlord had not calculated a precise amount.

The landlord’s testimony regarding the rationale for the liquidated damages amount was contradictory and confusing. First the landlord stated that they always charged the owner 50 percent of the monthly rent to place a new tenant, and then they stated that they do not charge the owner this amount in the case of a breached lease.

As the landlord’s application was not successful, they are not entitled to recovery of the filing fee for the cost of their application.

### Conclusion

The landlord’s application is dismissed.

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: September 24, 2014

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Residential Tenancy Branch

