



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ARSTSERVICE RESIDENTIAL LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with a landlord's application for a Monetary Order for loss of rent, liquidated damages; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and Procedural Matters

The landlord orally requested the monetary claim be increased to include a claim for cleaning charges. The tenant did not object to this request and was agreeable to compensating the landlord for this amount. Therefore, I amended the application accordingly.

### Issue(s) to be Decided

1. Is the landlord entitled to recover rent and liquidated damages from the tenants?
2. Is the landlord entitled to compensation for cleaning costs, as amended?
3. Is the landlord authorized to retain the security deposit?

### Background and Evidence

The one year fixed term tenancy commenced on July 1, 2013 and the tenants paid a security deposit of \$537.50. The tenancy agreement provides that the tenants were required to pay rent of \$1,075.00 on the 1<sup>st</sup> day of every month for a fixed term expiring June 30, 2014. The tenancy agreement includes a liquidated damages clause as follows:

**Note: If the Tenant ends the tenancy before the end of the original term (clause 2(b)), the Landlord may, at the Landlord's option, treat this Tenancy Agreement at an end and in such event, the sum of \$537.50 shall be paid by the Tenant as liquidated damages and not as a penalty to cover the administration costs of re-renting the said premises. The payment by the Tenant of the said liquidated**

**damages to the Landlord is agreed to be in addition to any other rights or remedies available to the landlord.**

[reproduced as written]

The tenants gave the landlord notice of their intention to end the tenancy in December 2013 and the tenants vacated the rental unit on December 31, 2013.

The landlord is seeking to recover liquidated damages of \$537.50 since the tenants ended the tenancy early and unpaid rent for the month of January 2014.

The landlord submitted that, upon receiving the tenant's notice of their intent to end the tenancy, the landlord advised the tenants that to do so would be considered a breach of their agreement but that attempts would be made to re-rent the unit and they would be responsible for January 2014 if the unit was not re-rented. The landlord testified that advertising efforts commenced shortly after receiving the tenant's notice and the unit was re-rented starting February 21, 2014.

The tenant's representative was of the position that the landlord breached the tenancy agreement first, bringing the agreement to an end, and as such there was no contract in place that would entitle the landlord to the compensation it seeks.

The tenant and his representative submitted that the landlord's breaches consisted of the following:

1. Failure to provide peace and quiet due to chronic disturbances originating from the tenants in the adjacent unit, including sounds of fighting and furniture being thrown from the balcony of the adjacent unit in September or October 2013.

The tenant submitted that he complained to the landlord about the disturbances and the landlord failed to take sufficient action to deal with the disturbances.

I was provided copies of text and email communications exchanged between the parties with respect to such complaints.

2. Failure to provide sufficient security which resulted in a break-in of the common laundry room in late November or early December 2013 and the possibility that thieves were able to obtain personal information from the laundry card system.  
The tenant's representative submitted that the landlord could have avoided a break-in by having security cameras in place and restricting access to the laundry room to certain times.

The landlord responded to the tenant's assertions as follows:

1. The landlord did receive two complaints for the tenants about their neighbours and in response the landlord spoke with the neighbours and gave them a warning letter. The landlord spoke with tenants of other nearby units and no other tenants had complaints about disturbances. The landlord did not receive any further complaints from the tenants after the warning letter was issued. Further, the landlord has not received any complaints from the current tenant of the subject rental unit about disturbances.
2. The laundry card machine was stolen but that this was an isolated incident. The landlord acknowledged that there is a small chance that a sophisticated thief could access personal information contained on the machine which is why the landlord acted with due diligence by notifying the tenants to take precautionary measures with respect to their passwords and personal information.

Finally, the landlord requested \$143.83 for cleaning costs and the tenant agreed that this amount may be deducted from the security deposit during the hearing.

### Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons.

With respect to the tenant's argument that the tenancy agreement was breached by the landlord first and leaves the parties without a contract, I find this argument is based in common law but is not applicable in the circumstances before me, as explained below.

Section 91 of the Act provides that common law applies to landlords and tenants "except as modified or varied under this Act." The Act provides remedies for a tenant where the tenant is of the position that the landlord is in breach of the tenancy agreement, the Act or the Residential Tenancy Regulations. Providing tenants with remedies for breaches by the landlord serves to protect tenant's rights. Without such protection, a landlord could end a tenancy and take away a tenant's rights by violating the tenancy agreement. Therefore, I reject the argument that the tenancy agreement came to an end by way of a breach by the landlord and I turn to the provisions of the Act, regulations and tenancy agreement in determining the landlord's right to the compensation claimed.

Where a tenant has a fixed term tenancy agreement and the fixed term has not yet expired, the tenant may give notice to end the tenancy on an effective date that is not earlier than the fixed term expiry date. However, section 45(3) provides that a tenant may give a notice to end tenancy with an earlier effective date if the landlord has breached a material term of the tenancy agreement. Section 45(3) provides as follows:

"If a landlord has failed to comply with a material term of the tenancy agreement...and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice."

The tenant asserted that he suffered a loss of quiet enjoyment. It has been found by the courts that the right to quiet enjoyment is a material term of a tenancy agreement; therefore, I have considered whether the tenant put the landlord on notice of the breach and whether the landlord failed to correct the breach within a reasonable time.

The tenant provided evidence that he complained about disturbances coming from the neighbouring unit via email on July 11, 2013, and via text message on August 9, 2013. The landlord responded to the text by requesting the tenant provide a letter of complaint. The landlord also stated in her text message reply that she will issue a letter to the offending tenant and after three letters she can evict him. The tenant provided the requested complaint via an email on August 15, 2014. I was not provided any other documentation to demonstrate the tenant made any further complaints to the landlord about the neighbours after August 15, 2013 until the tenant emailed the landlord on December 9, 2013 in an attempt to give notice to end the tenancy citing several grievances including disturbances by the neighbours. The landlord responded to the December 9, 2013 email by informing the tenant that to give notice to end tenancy would breach the tenancy agreement and the tenants would be held responsible for liquidated damages and rent for January 2014 if replacement tenants were not secured. Despite this caution, the tenants proceeded to give notice the following day on December 10, 2014.

The tenant provided several typewritten statements by others who allegedly heard disturbances from the neighbouring unit; however, I find those documents of little evidentiary value considering they are unsigned, undated, do not refer to specific dates of disturbances; and, of questionable veracity since all of the statements are of the same format and print.

While I find it reasonably likely the tenants were disturbed by noises coming from the adjacent unit, I find the critical factor is that the tenants did not notify the landlord that they were experiencing further disturbances after giving their last complaint letter in August 2013 despite the landlord informing them that she would evict the offending tenant if three complaint letters were received. Thus, I am satisfied that upon receiving complaints from the tenants about disturbances from the neighbouring unit the landlord took action and that action was sufficient and reasonable considering the landlord did not receive any further complaints from the tenants. I find the landlord reasonably concluded the issue was resolved.

With respect to the laundry room break-in I find this incident does not absolve the tenants of their obligations under the tenancy agreement. The Act provides that the landlord's obligations under the Act are to repair and maintain so that the property complies with health, safety and building laws; and, the property is suitable for occupation, having regard for age, character and location of the property. The tenant did not put forth any evidence that the lack of security cameras violated the landlord obligations to repair and maintain the property in a manner that complies with the law. Nor, did the tenant satisfy me that a lack of security cameras and restricted laundry hours amount to negligence on part of the landlord considering I was not

provided any evidence to counter the landlord's position that the break-in was an isolated incident. It is important to note that a landlord is not expected to insulate a tenant from every possible event. Rather, the landlord was a victim of the crime as well. Having found a lack of evidence that the landlord violated the Act or was negligent in any way I find the laundry room break-in does not form a basis to exempt the tenants from their obligations under the tenancy agreement and the Act.

I also satisfied find the landlord acted appropriately by cautioning the tenants of the financial consequences if they were to proceed to end their fixed term tenancy upon receiving the tenant's email of December 9, 2013. I find the tenants chose to proceed with ending the tenancy and that they did so at their own expense. Therefore, I find the tenants did not satisfy me that section 45(3) applies or that they should be otherwise exempt from their obligations under the fixed term tenancy agreement.

In light of the above, I grant the landlord's request for unpaid rent for January 2014 in the amount of \$1,075. Although the landlord may have been entitled to request unpaid rent for a portion of February 2014 the landlord did not make such a request and I make no award.

I further award the landlord liquidated damages of \$537.50 as claimed for the following reasons: Residential Tenancy Policy Guideline 4 provides a policy statement with respect to claims for liquidated damages. 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 fixed term by the tenant. If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum unless the sum is found to be a penalty. In this case, I find the amount payable under the clause to be reasonable and is not a penalty. I am further satisfied that the amount agreed upon is in addition to any unpaid rent the landlord may seek from the tenants. Therefore, I grant the landlord's request to recover liquidated damages of \$537.50 from the tenants.

Finally, I uphold the agreement reached between the parties during the hearing that the landlord is authorized to deduct \$143.83 from the security deposit for cleaning costs. Therefore, I authorize the landlord to the security deposit in partial satisfaction of all of the amounts awarded to the landlord, including the cleaning costs.

As the landlord was successful in this Application, I further award the landlord recovery of the filing fee paid for this Application.

Based on all of the foregoing, I provide the landlord with a Monetary Order calculated as follows:

Unpaid Rent: January 2014	\$1,075.00
Liquidated damages	537.50
Cleaning costs	143.83
Filing fee	50.00

Less: security deposit  
Monetary Order

(537.50)  
\$1,268.83

To enforce the Monetary Order it must be served upon the tenants and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlord has been authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$1,268.83 to serve upon the tenants and enforce as necessary.

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: October 10, 2014

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Residential Tenancy Branch

