



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNR, MNDC, MND, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for damages or loss under the Act, and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Is the landlord entitled to a monetary order for damages or loss?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The parties entered into a fixed term tenancy which began on January 10, 2014 and was to expire on July 31, 2014. Rent in the amount of \$800.00 was payable on the first of each month. A security deposit of \$400.00 was paid by the tenant. The tenancy ended May 30, 2014.

The parties agreed a move-in and move-out condition inspection report was completed.

The landlord claims as follows:

a.	Recover unpaid hydro invoice	\$ 89.25
b.	Carpet cleaning	\$ 73.69
c.	Liquidated damages	\$ 500.00
d.	Filing fee	\$ 50.00
	<b>Total claimed</b>	<b>\$ 712.94</b>

### Hydro invoice and carpet cleaning

At the outset of the hearing the tenant agreed to pay the hydro invoice and the carpet cleaning invoice.

### Liquidated damages

The landlord's agent testified that the tenant breached the fixed term tenancy agreement by ending the tenancy early. The agent stated that the tenancy agreement provided a clause that the tenant agreed to pay the pre-estimate of the landlord's cost of re-renting the unit. The agent stated this was fully explained to the tenant and they had the tenant initial clause 5 to indicate this was explained.

The tenant acknowledged there is a term of liquidated damages in the tenancy agreement. The tenant stated that when she gave notice to end the tenancy the landlord told her that the amount would be lower.

The landlord's agent denied that they agreed to lower the amount for liquidated damages. The agent stated that the tenant gave her consent in the move-out inspection to the amount of \$500.00. Filed in evidence is a move-out condition inspection report, which support the amount agreed was \$500.00.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

#### Hydro Invoice and carpet cleaning

At the outset of the hearing the tenant agreed that she was responsible for the hydro invoice and carpet cleaning invoice. Therefore, I find the landlord is entitled to recover these costs in the amount of **\$162.94**

#### Liquidated damages

Section 45 of the Residential Tenancy Act states:

*45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*  
*(a) is not earlier than one month after the date the landlord receives the notice,*  
*(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*  
*(c) is the day before the day in the month, or in the other period on which the tenancy is based,*

In this case, the tenant gave notice to end the fix term tenancy earlier than the date specified in the tenancy agreement. I find the tenant breach section 45 of the Act.

The evidence of the tenant was that the landlord agreed to a lower amount of liquidated damages. This was denied by the landlord's agent. As a result, I must refer to the written terms of the tenancy agreement, clause #5, which is initialed by the tenant and reads that if the tenant ends the fix term tenancy that the tenant will pay to the landlord the sum of \$500.00 as liquidated damages and not as a penalty. Liquidated damages are an agreed pre-estimate of the landlord's cost of re-renting the rental unit and must be paid in addition to any other amount owed by tenants. Further, in the move-out condition inspection report the tenant agreed to the amount of \$500.00.

As I have found the tenant breached the Act and the tenancy agreement when they gave notice to end the tenancy early, I find the landlord is entitled to recover the liquidated damages as specified in the written tenancy agreement in the amount of **\$500.00**.

I find that the landlord has established a total monetary claim of **\$712.94** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$400.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$312.94**.

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

At the conclusion of the hearing, the tenant agreed to a payment schedule as follows:

- \$100.00 on October 24, 2014;
- \$100.00 on November 14, 2014; and
- \$62.94 on December 12, 2014.

When the payment plan was considered the landlord's filing fee was not included in the payment calculation. Therefore, I will leave the remaining \$50.00 for the tenant to make arrangements with the landlord to pay.

### Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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 09, 2014

---

Residential Tenancy Branch

