



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOLLYBURN PROPERTIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** MNR, MNSD, MNDC, FF

### **Introduction**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order for loss of income, liquidated damages and for the filing fee. The landlord also applied to retain the security deposit.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

### **Issues to be decided**

Is the landlord entitled to a monetary order for loss of income, liquidated damages and the filing fee? Is the landlord entitled to retain the security deposit?

### **Background and Evidence**

The landlord testified that the tenancy started on September 01, 2013 for a fixed term ending August 31, 2014. The rent was \$1,500.00 payable on the first of each month. Prior to moving in, the tenant paid a security deposit of \$750.00.

The landlord filed a copy of the tenancy agreement that contains a clause regarding liquidated damages as follows:

*If the tenant ends the fixed term tenancy, or is in breach of the Residential Tenancy Act or a material term of this Agreement that causes the landlord to end the tenancy before the end of the term as set out in B above, or any other subsequent fixed term, the tenant will pay to the landlord the sum of **\$805.33** as liquidated damages, and not as a penalty. Liquidated damages are an agreed pre-estimate of the landlord's costs of re-renting the rental unit and must be paid in addition to any other amounts owed by the tenant, such as unpaid rent or for damage to the rental unit or residential property.*

On July 01, 2014, the tenant moved out and a move out inspection was conducted. The report was filed into evidence. Both parties agreed that the rental unit was left in a satisfactory condition. The landlord had found a new tenant for July 11, 2014. The landlord requested the tenant to cover the loss of income for 11 days in July in addition to liquidated damages as per the tenancy agreement. The tenant agreed to pay liquidated damages but disputed the loss of income for 11 days in July.

On July 11, the landlord filed this application. During the hearing the tenant made a request for the return of double the security deposit. I explained to the tenant that since the landlord had made application within the legislated time frame of 15 days, the doubling of the deposit did not apply.

The landlord has applied for \$483.80 for loss of income, \$805.33 for liquidated damages and \$50.00 for the filing fee. The landlord has also applied to retain the security deposit in partial satisfaction of this claim.

### **Analysis**

Based on the testimony of both parties, I find that the tenant was in a fixed term tenancy with an end date of August 31, 2014. By ending the tenancy prior to the end date, the tenant breached a term of the tenancy agreement.

Pursuant to section 4 of the *Residential Tenancy Policy Guideline*, 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.

In contract law the term "*liquidated damages*" refers to a genuine pre-estimate of the loss that will be suffered in the event of a breach of the contract; it is not used to describe some subset of damage that the landlord requires the tenant to pay, in addition to general damages flowing from a breach of the contract.

In this case, the landlord invoked the liquidated damage clause in the tenancy agreement and elected to claim the liquidated damage amount. I find that by doing so the landlord has fixed the amount of damages to which the landlord is entitled to at **\$805.33**. The landlord's claims for additional amounts flowing from the tenant's breach of contract, over and above the liquidated damage amount are dismissed without leave to reapply.

Accordingly, I award the landlord her claim for liquidated damages and dismiss her claim for loss of income.

The tenant did not dispute the landlord's claim for liquidated damages and agreed to pay the amount of liquidated damages at the end of tenancy. However the landlord chose to file this application for the additional loss of income. Since I find that the landlord has not proven her case for the additional loss of income, the landlord must also bear the cost of filing this application.

Overall the landlord has established a claim for **\$805.33**. I order that the landlord retain the security deposit of **\$750.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of **\$55.33**. 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 in the amount of **\$55.33**.

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: December 15, 2014

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Residential Tenancy Branch

