



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNSD, MNDC, FF, O

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord on August 13, 2014 for a Monetary Order for: damage to the rental unit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; to keep all the security deposit; and, to recover the filing fee from the Tenant for the cost of having to make the Application. The Landlord also applied for “Other” issues; however, no further issues were disclosed or identified by the Landlord during the hearing.

An agent for the Landlord appeared for the hearing and provided affirmed testimony as well as documentary evidence in advance of the hearing. There was no appearance for the Tenant during the 15 minute duration of the hearing. As a result, I focused my attention to the service of the documents by the Landlord for this hearing.

The Landlord’s agent testified that she served the Tenant with a copy of the Application and the Notice of Hearing documents to the Tenant’s forwarding address by registered mail on August 20, 2014. The Landlord provided a copy of the Canada Post tracking number as evidence for this method of service.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord’s agent, I find that the Tenant was deemed served with the required documents on August 25, 2014 pursuant to the Act.

At the onset of the hearing, the Landlord’s agent confirmed that she had made a clerical error in the amount of the early termination fee she was seeking from the Tenant. The Application disclosed an amount of \$975.00; however the Landlord wanted to amend

this amount to \$950.00. As a result, I amended this amount on the Landlord's Application pursuant to my authority under Section 64(3) (c) of the Act.

### Issue(s) to be Decided

- Is the Landlord entitled to the costs resulting from damage to the rental unit?
- Is the Landlord entitled to liquidated damages (the early termination fee)?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the Landlord's monetary claim?

### Background and Evidence

The Landlord's agent testified that this tenancy started on April 1, 2013 for a fixed term period. The parties engaged into a number of fixed term tenancies thereafter, the latest one of which started on May 1, 2014 and was due to expire on April 30, 2015. The tenancy agreement for this latest fixed term was provided into written evidence. It shows that after the fixed term period ends, the Tenant is required to vacate the rental suite.

Rent under the tenancy agreement was payable by the Tenant in the amount of \$1,900.00 on the first day of each month. The Tenant paid a security deposit in the amount of \$975.00 on April 9, 2013, which the Landlord still retains. The parties completed a move in Condition Inspection Report (the "CIR") at the start of the tenancy on April 15, 2013.

The Landlord's agent testified the Tenant contacted her by phone in May 2014 and explained that she was going to be ending the fixed term tenancy early and would be vacating the rental suite by the end of July 2014. The Landlord's agent testified that she explained to the Tenant that she was in a fixed term tenancy and that the tenancy agreement provided for an early termination clause.

The Landlord pointed to section 3.1 of the tenancy agreement subtitled "LIQUIDATED DAMAGES". This clause states the following:

*"If the Tenant ends or gives notice to end tenancy before the end of the original Term of this Lease, or any subsequent fixed term, or if the Tenant is in breach of the Residential Tenancy Act or a material term of this Lease that causes the Landlord to end the tenancy before the end of the original Term or subsequent fixed term ("Early Termination"), then the Tenant must pay the sum of **Nine Hundred and Fifty Dollars (\$950.00)** to the Landlord as liquidated damages and not as a penalty ("Liquidated Damages"). The Liquidated Damages is an agreed*

*pre-estimate of the Landlord's administrative costs of advertising and re-renting the Premises as a result of the Early Termination. Payment of the Liquidated Damages does not preclude the Landlord from exercising any further right to recovering other damages from the Tenant".*

[Reproduced as written]

The Landlord's agent testified that they were able to re-rent the Tenant's suite for August 2014 but now seeks to recover the liquidated damages from the Tenant as a result of her breaking the fixed term tenancy.

The Landlord's agent testified that on July 30, 2014, the parties completed a move out CIR, which was provided into written evidence. The Landlord's agent pointed to the note made on the CIR regarding a 15 inch long scrape on the master bedroom wall. The Landlord's agent pointed to the conclusion of the CIR where the Tenant acknowledges and signs for this damage as well as providing a forwarding address on the CIR.

The Landlord's agent testified that she offered the Tenant to repair the damage of her own accord but the Tenant did not. As a result, the Landlord had to employ a professional company to repair the damage which involved sanding, filling, priming and re-painting the wall. The Landlord's agent submitted an invoice for the amount of \$194.25 to verify this loss.

The total amount the Landlord now seeks to recover from the Tenant for damage to the rental unit and for breaking the fixed term tenancy is **\$1,144.25 (\$950.00 + 194.25)**.

### Analysis

In relation to the Landlord's claim for the Tenant's security deposit, Section 38(1) of the Act stipulates a 15 day time limit to make an Application to keep the Tenant's security deposit after receiving the Tenant's forwarding address in writing. The Tenant provided the Landlord with a forwarding address on the move out CIR on July 30, 2014.

Therefore, I find that the Landlord made the Application to keep the Tenant's security deposit within the time limits stipulated by the Act.

Fixed term tenancies are designed to strictly prohibit a tenant or landlord from ending the tenancy. In this case, I accept the Landlord's agent's evidence that the Tenant broke the fixed term tenancy by leaving early on July 30, 2014.

Policy Guideline 4 to the Act defines liquidated damages as:

*“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...”*

[Reproduced as written]

The Tenant signed the tenancy agreement which contained a liquidated damages clause, as detailed above. Therefore, I find the Tenant is liable to pay to the Landlord liquidated damages in the amount of **\$950.00** as required by the tenancy agreement.

Section 37(2) of the Act requires a tenant to leave a rental suite reasonably clean and undamaged at the end of a tenancy. In addition, Section 21 of the *Residential Tenancy Regulation* allows a CIR to be considered as evidence of the state of repair and condition of the rental unit, unless a party has a preponderance of evidence to the contrary.

The Tenant provided no evidence prior to the hearing. Therefore, I rely on: the undisputed testimony of the Landlord's agent; the move out CIR which was signed by the Tenant acknowledging damage to the bedroom wall; and the invoice supporting the cost of the repair. I find this to be sufficient evidence on the balance of probabilities to show that the Tenant caused damage to the rental unit. The Landlord was able to verify the undisputed loss and therefore, is awarded the **\$194.25** claimed for damage to the rental unit.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the **\$50.00** filing fee for the cost of this Application pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is **\$1,194.25 (\$950.00 + \$194.25 + \$50.00)**.

As the Landlord already holds \$975.00 in the Tenant's security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38(4) (b) of the Act. As a result, the Landlord is awarded the remaining amount of **\$219.25 (\$1,194.25 - \$975)**.

### Conclusion

The Tenant breached the Act by ending the fixed term tenancy early and causing damage to the rental unit.

Therefore, the Landlord may keep the Tenant's security deposit and is granted a Monetary Order for the remaining balance of **\$219.25**, pursuant to Section 67 of the Act.

This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenant fails to make the payment in accordance with the Landlord's instructions.

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: March 09, 2015

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Residential Tenancy Branch

