



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Prospero International Realty Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act ("Act"). The landlord applied for authority to keep all or part of the tenant's security deposit, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee paid for this application.

The landlord's agent (hereafter "landlord") attended the telephone conference call hearing; the tenant did not attend.

The landlord testified that they served the tenant with the application for dispute resolution and notice of hearing by registered mail to an incorrect address provided by the tenant, which was then returned. The landlord submitted further that they clarified the address with the tenant, and the landlord sent the application for dispute resolution and notice of hearing via registered mail, again, and the mail has not been returned. The landlord provided the receipts for the registered mail.

Based upon the submissions of the landlord, I find the tenant was served notice of this hearing and the landlord's application in a manner complying with section 89(1) of the Act and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present her evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to retain a portion of the tenant's security deposit in satisfaction of their monetary claim?

Background and Evidence

The landlord submitted that this tenancy began on September 15, 2013, for a fixed term through September 14, 2014, that the tenancy ended on May 31, 2014, when the tenant vacated the rental unit, and that tenant paid a security deposit of \$515.00, which has been retained by the landlord.

The landlord's monetary claim is \$275.00, which is a sum for liquidated damages. In support of their claim the landlord submitted that as the tenant ended the tenancy prior to the end of the fixed term, they are entitled to retain that amount from the tenant's security deposit, due to the clause in the written tenancy agreement allowing for liquidated damages.

The landlord referred the clause in the written tenancy agreement, which in this case was contained in section 5, and to which the tenant affixed her initials. The landlord submitted a copy of the written tenancy agreement.

Analysis

Residential Tenancy Branch Policy Guideline #4 (Liquidated Damages) states that in order to be enforceable, a liquidated damages clause in a tenancy agreement must be a genuine pre-estimate of loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

In this case, I find the written and signed tenancy agreement required that the tenant pay a liquidated damages fee of \$275.00 in the event the tenant ended the fixed term tenancy prior to the date mentioned, here September 14, 2014. I find the landlord submitted sufficient evidence to show that this term is intended to offset costs associated with procuring a new tenant. After reviewing this clause, I do not find the amount is unreasonable and I do not find it is a penalty. Therefore, I find the tenant is responsible for paying the liquidated damages fee of \$275.00 and that the landlord has established a monetary claim in that amount.

I also allow the landlord recovery of their filing fee of \$50.00 paid for this application.

I therefore grant the landlord a monetary award of \$325.00. I direct the landlord to retain the amount of \$325.00 from the tenant's security deposit of \$515.00 in satisfaction of their monetary award, and order that they return the balance of the security deposit to the tenant, or the amount of \$190.00, forthwith.

Conclusion

The landlord's application is granted, they are directed to retain the amount of their monetary award of \$325.00 from the tenant's security deposit, and are ordered to return the balance of \$190.00 to the tenant forthwith.

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 9, 2015

---

Residential Tenancy Branch

