



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Easy Rent Real Estate Services  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes:

**MNDC, MNSD, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$1,417.50 as liquidated damages?

May the landlord retain the \$1,350.00 security deposit in satisfaction of the claim?

### Background and Evidence

The tenancy commenced on November 22, 2013 as a fixed term to end November 30, 2014. Rent in the sum of \$2,700.00 was due on the 1<sup>st</sup> day of each month. A security deposit in the sum of \$1,350.00 was paid. A copy of the tenancy agreement was supplied as evidence.

Clause 5 of the tenancy agreement set out liquidated damages. The tenant agreed to pay \$1,417.50 should the tenant end the tenancy by vacating before the end of the fixed term. The liquidated damages was agreed to reflect all costs associated with re-renting the rental unit.

On June 16, 2014 the tenant gave notice to end the tenancy and she vacated on August 29, 2014. The landlord applied claiming against the deposit within the week.

The landlord said that when the tenant breached the term of the tenancy they had to seek out a new occupant. They were fortunate and located a new occupant effective September 1, 2014. The landlord is charged the fee set out as liquidated damages

each time the agent must locate a new occupant. By giving notice before the end of the fixed term the landlord was faced with unforeseen costs. The landlord is paying for the cost of seeking out tenants, the time it takes to screen tenants and the agent's costs.

The tenant said that it was unfair that she should have to pay this fee given the tenancy was ended as the result of events that were beyond her control. The tenant believes the costs were limited or non-existent as the landlord used on-line advertising and located a new occupant very quickly.

### Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

A tenant may end a fixed term tenancy only in specific circumstances. Section 45(3) of the Act sets out the steps that maybe taken to end a fixed term tenancy:

*(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service 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.*

There was no evidence before me that the landlord had breached a material term of the tenancy. Therefore, I find that when the tenant ended the fixed term tenancy agreement before the last day of the term she breached the Act.

In relation to the claim for liquidated damages, I have considered Residential Tenancy Branch policy which suggests that liquidated damages must be a genuine pre-estimate of the loss at the time the contract is entered into; otherwise the clause may be found to constitute a penalty and, as a result, be found unenforceable.

The sum can be found to be a penalty if it is extravagant in comparison to the greatest loss that could follow a breach. Policy also suggests that generally clauses of this nature will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum.

In this case the tenant signed a tenancy agreement that set out the costs of re-renting, in an estimated, pre-agreed sum that reflected the agent's costs that would be passed on to the landlord. I find that the sum indicated in the contract signed by both parties reflects the amount that will be levied and that it is not a penalty or oppressive. The damages consist of just over one-half of the amount of rent the tenant was paying; which I find falls within the realm of reasonable.

Therefore, I find that the landlord is entitled to compensation for liquidated damages in the sum of \$1,417.50.

I find that the landlord may retain the \$1,350.00 security deposit in partial satisfaction of the claim.

As the application has merit I find that the landlord is entitled to recover the \$50.00 filing fee cost from the tenant.

Based on these determinations I grant the landlord a monetary Order for the balance of \$117.50. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

### Conclusion

The landlord is entitled to compensation for liquidated damages, as claimed.

A monetary order has been issued for the balance owed to the landlord.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

This decision is final and binding and 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 25, 2015

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Residential Tenancy Branch

