



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding COLUMBIA PROPERTY MANAGEMENT LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNR, MNDC, FF

### 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 September 3, 2014. The Landlord applied for a Monetary Order for: damage to the rental unit; for unpaid rent; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; and, to recover the filing fee from the Tenants for the cost of making the Application.

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 Tenants during the 30 minute duration of the hearing or any submission of evidence prior to 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 each Tenant with a copy of the Application and the Notice of Hearing documents to the forwarding addresses provided by the Tenants at the end of the tenancy. This was done by registered mail on September 8, 2014. The Landlord provided a copy of the Canada Post tracking receipts as evidence to verify 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, I find that the Tenants were deemed served with the required documents on September 13, 2014 pursuant to the Act.

Pursuant to Rule 3.17 of the Residential Tenancy Branch Rules of Procedure, the Landlord was allowed to submit invoice evidence relating to her monetary claim in order to verify these losses being claimed from the Tenants.

In the documents provided to me after the hearing, the Landlord requested that she withdraw her Application for costs associated with the key replacement for \$85.00 and \$150.00. Accordingly, I did not consider this aspect of the Landlord's claim in my findings.

#### 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 "re-rent" fee)?
- Is the Landlord entitled to lost rent?

#### Background and Evidence

The Landlord's agent testified that this tenancy started on October 1, 2013 for a fixed term period of one year which was due to expire on September 30, 2014. However, the Tenants vacated the rental suite early on May 23, 2014. Rent under the tenancy agreement was payable by the Tenants in the amount of \$900.00 on the first day of each month. The Tenants paid a security deposit in the amount of \$450.00 on September 20, 2013. The Landlord's agent explained that they still retain the Tenants' security deposit because the Tenants provided written consent for the Landlord to keep this at the end of the tenancy.

The Landlord's agent testified that the caretaker of the building completed a move in Condition Inspection Report (the "CIR") with the Tenants on September 30, 2013. A move out CIR was completed with the Tenants on May 23, 2014. The CIR was provided into written evidence.

The Landlord's agent testified that in May 2014, the Tenants notified the building caretaker in writing that they were moving out of the rental suite on May 31, 2014. The Landlord's agent referred to a written letter which was sent to the Tenants dated May 21, 2014 in which it was explained that the Tenants were in a fixed term tenancy and would be responsible for rent until such time the Landlord was able to re-rent the suite. The letter also explained that the Tenants were still responsible for the \$300.00 "re-rent fee".

The Landlord's agent was asked about the "re-rent fee". The Landlord's agent then referred to schedule A in the addendum to the signed tenancy agreement subtitled "BREAKING LEASE TERM". This clause states the following:

*"If the Tenant terminates the tenancy before the end of the original term, the Landlord may, at the Landlord's option, treat his Tenancy Agreement as being at an*

*end. In such event, the sum of **\$300.00** shall be paid by the Tenant to the landlord as liquidated damages, and not as a penalty, to cover the administration costs of re-renting the said premises. The Landlord and Tenant acknowledge and agree that the payment of the said liquidated damages shall not preclude the Landlord from exercising any further right of pursuing another remedy available in law or in equity, including, but not limited to, damages to the premises and damages as a result of loss of rental income due to the Tenant's breach of the terms of this agreement."*

[Reproduced as written]

The Landlord's agent testified that she placed the Tenants' rental unit on the company website in May 2014 for re-rental for June 2014 and July, 2015. The Landlord's agent provided a table of the listings which indicated the rental unit. In addition, the rental unit was also placed on the property market for sale in an attempt to mitigate loss. The Landlord's agent testified that the owners of the rental unit took the position that if they were able to re-rent it before it sold, then it would be re-rented. However the suite was not able to be re-rented for June 2014 and the Landlord's agent testified that the rental unit sold on July 15, 2015.

As a result, the Landlord now seeks to claim, **\$300.00** in liquidated damages, **\$900.00** lost rent for June 2014, and **\$435.45** for the prorated lost rent up until the property sold on July 15, 2014.

The Landlord's agent testified that the Tenants failed to clean the stove oven and the carpets at the end of the tenancy. The Landlord's agent pointed to a document which accompanied the CIR which the Landlord's agent referred to as the CIR summary sheet. This document shows the Tenants signed to verify that the carpets and stove had not been cleaned.

The Landlord's agent also referred to the CIR which shows that the carpets were professionally cleaned at the start of the tenancy and the Tenants did not provide a receipt of professional carpet cleaning at the end of the tenancy. As a result, the Landlord seeks to claim from the Tenant **\$30.00** for the cleaning of the stove which the caretaker had to perform over the course of two hours. The Landlord's agent provided an invoice for the carpet cleaning which was performed at the end of the tenancy which she now seeks to recover from the Tenants in the amount **\$131.25**.

The total amount the Landlord now seeks to recover from the Tenants is **\$1,796.70** (**\$300.00 + \$900.00 + \$435.45 + \$30.00 + \$131.25**). The Landlord's agent testified that the Tenants had given written consent for the Landlord to keep the Tenant's security

deposit. Therefore, after deducting this amount from the amount of losses claimed by the Landlord, the Landlord's agent now seeks a Monetary Order for the balance in the amount of **\$1,346.70**.

### Analysis

Fixed term tenancies are designed to strictly prohibit a tenant or landlord from ending the tenancy without authority under the Act. In this case, I accept the Landlord's agent's evidence that the Tenants broke the fixed term tenancy by leaving early on May 23, 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 Tenants signed the tenancy agreement which contained a liquidated damages clause, as detailed above. Therefore, I find the Tenants are liable to pay to the Landlord liquidated damages in the amount of **\$300.00** as required by the tenancy agreement.

When a tenant breaks a fixed term tenancy, the landlord is required under Section 7(2) of the Act to take reasonable steps to mitigate loss. After this, the Tenant would then be responsible, in addition to the liquidated damages, for any further losses of the Landlord such as lost rent. In analyzing the Landlord's claim for lost rent, I find that the Landlord has provided sufficient evidence to show that efforts were made to re-rent the rental suite for June, 2014. I further find that as the Tenants gave written notice to end the tenancy in May, 2014 this would not have given sufficient time or likelihood that the suite would have rented for the June 2014 month. Therefore, I find the Landlord is entitled to loss of June 2014 rent in the amount of \$900.00.

While putting a rental unit on the property market for sale would not be sufficient evidence on its own that the Landlord mitigated loss, I accept the Landlord's evidence that the rental suite continued to be advertised for the July 2015 month and that had the property not sold, the loss to the Landlord could have continued and resulted in an increased claim for lost rent. On this basis, I award the Landlord lost rent prorated rent for July 2014 in the amount of \$435.45.

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 Tenants provided no evidence prior to the hearing. Therefore, I rely on the undisputed testimony of the Landlord's agent, the move out CIR, and the accompanying 'summary' document which was signed by the Tenants acknowledging the fact that the carpets and the stove oven had not been cleaned at the end of the tenancy.

I find this to be sufficient evidence on the balance of probabilities to show that the Tenants caused damage to the rental unit. The Landlord was able to verify the carpet cleaning with an invoice for this cost and I accept the oral evidence that the stove oven was cleaned at a cost of \$30.00. Therefore, the Landlord is awarded the **\$161.25 (\$30.00 + \$131.25)** 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 Tenants 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 **\$1,846.70 (\$300.00 + \$900.00 + \$435.45 + 161.25 + \$50.00)**.

As the Landlord testified that the Tenants have given written permission for the Landlord to keep their security deposit of \$450.00, I find the Landlord is entitled to the outstanding balance in the amount of **\$1,396.70 (\$1,846.70 - \$450.00)**.

### Conclusion

The Tenant breached the Act by ending the fixed term tenancy early and causing damage to the rental unit. Therefore, the Landlord is granted a Monetary Order in the amount of **\$1,396.70**, pursuant to Section 67 of the Act. This order must be served on the Tenants and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenants fail to make the payment.

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 24, 2015

---

Residential Tenancy Branch

