



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Regius Investment Corp.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF

### Introduction

This was a hearing with respect to the landlord's application for a monetary award and an order authorizing the retention of the security deposit. The hearing was conducted by conference call. The landlord and her agent, who is the landlord's son, called in and participated in the hearing. The tenant did not attend, although she was served by registered mail sent on October 21, 2014 to the mailing address that she provided to the landlord.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?  
Is the landlord entitled to retain the tenant's security deposit?

### Background and Evidence

The rental unit is a strata title apartment in Vancouver. On October 25, 2013 the tenant signed a tenancy agreement for a fixed term beginning November 15, 2013 and ending October 31, 2014. The monthly rent was \$2,500.00. The tenant paid a security deposit of \$1,250.00 on October 25, 2013. The tenant's rent cheque for May, 2014 was returned because the tenant stopped payment on the cheque. The landlord served the tenant with a 10 day Notice to End Tenancy for unpaid rent on May 2, 2014 by posting a copy to the door of the rental unit. The landlord's agent testified that the tenant returned the keys to the rental unit to the front desk at the rental property.

The landlord claimed the following

- May rent: \$2,500.00
- NSF fee: \$25.00
- "termination of contract fee": \$2,500.00

• Strata move-in fee:	\$100.00
Total:	\$5,125.00

The landlord submitted a copy of a tenancy agreement. The document that the landlord referred to as a tenancy agreement consisted of a number of pages. The first page, titled: "FIXED TERM TENANCY AGREEMENT" contained information common to an application for tenancy, including personal information, references, and banking and credit information. It also specified the term of the tenancy and the amount of the monthly rent. The next page was titled: "CHECK LIST" and was a blank form of condition inspection form. The third page was also titled "FIXED TERM TENANCY AGREEMENT". This page and the following two pages contained 29 numbered paragraphs intended to be terms of the tenancy agreement. It was signed on the third page by the landlord and the tenant. The following page was a Strata Property Act Form K signed by the tenant to acknowledge Strata rules and bylaws. The landlord provided a form: "AUTHORITY TO DO A CREDIT CHECK" as the next page. It provided the tenant's personal information and was signed to authorize the landlord to obtain credit reports. The final page was a blank document titled: "**Agreement to Assign or Terminate Lease**". Although it contained spaces to provide information, including the date, tenant names and the address, the form was not completed. Under the heading: "**(2) Early Termination of Lease**", It contained several provisions, one of which stated as follows:

- A monetary compensation of \$1400 is due upon your written notice to vacate.

The document had been altered; the amount of \$1400 was crossed out and "ONE MONTH" was written beneath the line.

The form contained what appeared to be hand drawn boxes with some initials and it contained provisions for signatures by tenant, landlord and witnesses, but it was unsigned and undated.

The landlord submitted at the hearing that the above referenced document formed part of the tenancy agreement and it obliged the tenant to pay the landlord the sum of \$2,500.00 as a "termination of contract fee".

The landlord also claimed an NSF charge for the May cheque that was returned and the landlord claimed a strata move in fee of \$100.00. The landlord's agent referred to an e-mail from the tenant, who denied that she ever moved into the rental unit, but he said that the unit was occupied and people were observed coming and going from the rental

unit during the tenancy. The landlord also submitted a copy letter from the strata manager to the tenant dated February 14, 2014 demanding payment of a move-in fee. The landlord's agent testified that the unit was re-rented for June. He referred to an agreement signed by the landlord on May 7, 2014, after the tenancy ended that obliged the landlord to pay him a one month releasing fee.

### Analysis

The tenant moved out without providing any notice. I find that the landlord is entitled to an award for unpaid rent for May in the amount of \$2,500.00 as well as an NSF cheque charge of \$25.00 and a move-in fee of \$100.00.

With respect to the landlord's claim for a \$2,500.00 "termination of contract fee" this is akin to a claim for liquidated damages. The Residential Tenancy Policy Guideline with respect to liquidated damages notes that:

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. The amount agreed to must be a genuine pre-estimate of the 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 considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into.

The tenancy agreement is a contract of adhesion drawn by the landlord. If the tenant wished to rent from the landlord she was obliged to accept the terms of the agreement without modification. The liquidated damage clause must therefore be interpreted having regard to the *contra proferentem* doctrine: simply put, this means that any ambiguity in the clause in question must be resolved in the manner most favourable to the tenant.

In seeking to claim payment of the sum of \$2,500.00, the landlord referred to a separate document said to be part of the contract. The document was not fully completed. It provided that monetary compensation is due upon the tenant giving written notice to vacate. The amount specified was crossed out and the words "One Month" written below. The changes were not initialled. By the wording of the clause, the obligation to pay is triggered by the tenant's written notice to vacate. In this case there was no written notice. Because the form was not signed by the tenant, because no written notice was given and because the amount to be paid is uncertain, I find that the provision is too ambiguous and uncertain to be enforceable. As well, because it was

not signed or dated, as were all the other documents said to comprise parts of this tenancy agreement, I am not prepared to find that the quoted provision was validly incorporated into the tenancy agreement. The landlord's claim for a \$2,500.00 termination fee is therefore dismissed without leave to reapply.

### Conclusion

I have awarded the landlord the sum of \$2,625.00. The landlord has been partially successful on this application and I award the landlord \$50.00 of the \$100.00 paid as a filing fee, for a total award of \$2,675.00. I order that the landlord retain the \$1,250.00 security deposit in partial satisfaction of this award and I grant the landlord an order under section 67 for the balance of \$1,425.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

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: June 15, 2015

---

Residential Tenancy Branch

