



# Dispute Resolution Services

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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, MNSD, FF

### Introduction

This hearing dealt with a landlord's application for a Monetary Order for cleaning costs, liquidated damages, unpaid rent, loss of rent and a late fee; and, authorization to retain the tenant's security deposit and pet damage deposit. The tenant did not appear at the hearing. The landlord provided evidence that the hearing documents were sent to the tenant via registered mail on November 28, 2014 using an address obtained by a collection agency. Documentary evidence pertaining to service of the hearing package included a copy of the registered mail receipt, including tracking number, email correspondence between the collection agency and the landlord and an email the tenant had written to the collection agent dated November 17, 2014. Based upon the evidence before me, I was satisfied the landlord sufficiently served the tenant with the hearing documents in a manner that complies with the Act and I continued to hear from the landlord without the tenant present.

### Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for the amounts claimed?
2. Is the landlord authorized to retain all or part of the tenant's deposits?

### Background and Evidence

The fixed term tenancy commenced September 1, 2013 and was set to expire August 31, 2014. The tenant paid a security deposit of \$387.50 and a pet damage deposit of \$387.50. The tenant was required to pay rent of \$775.00 on the first day of every month. The tenancy agreement also provides for payment of late fees of \$25.00 and a charge of \$300.00 if the tenant ends the tenancy before the expiry date of the fixed term.

The landlord submitted that the tenant left a notice to end the tenancy in the landlord's mailbox on March 31, 2014 to be effective April 9, 2014. The landlord responded to the tenant's notice by way of a letter dated April 2, 2014 whereby the landlord advised the tenant that her lease did not expire until August 31, 2014 and advising the tenant she was responsible for paying rent for the unit until the expiry of the fixed term or until such time the unit was re-rented. The tenant chose to vacate the rental unit.

The landlord submitted that a move-out inspection with the tenant for April 11, 2014; however, the tenant delivered the rental unit keys to the landlord's office on April 11, 2014 and stated she would not be participating in the move-out inspection. The landlord proceeded to complete the move-out inspection report without the tenant present.

The landlord seeks to recover \$2,839.25 from the tenant for the following:

1. Unpaid rent for April 2014 in the sum of \$775.00 since the tenant failed to pay rent that was due.
2. Late fee of \$25.00 for the month of April 2014 since the tenant failed to pay rent for April 2014 when due.
3. Lease break fee of \$300.00 as provided in the tenancy agreement and because the tenant ended the tenancy before the expiry date of the fixed term.
4. Five hours of cleaning at a cost of \$100.00 because the tenant failed to leave the rental unit sufficiently clean.
5. Carpet cleaning in the amount of \$89.25 because the tenant had a pet in the unit and failed to clean the carpets.
6. Loss of rent for the months of May and June 2014 in the amounts of \$775.00 for each month. The landlord submitted that the unit was advertised for rent starting April 2, 2014 via newspaper, the landlord's website and on two other popular websites where rental units are advertised.

Documentary evidence provided by the landlord included a copy of: the tenancy agreement; the tenant's notice to end tenancy dated March 31, 2014; the landlord's letter to the tenant dated April 2, 2014; a note made when the tenant delivered the keys to the landlord's office on April 11, 2014; the condition inspection report of April 11, 2014; the cleaning invoice; the carpet cleaning invoice; advertisements placed for the rental unit; the registered mail receipt for service of the hearing package; the tenant's email to the collection agent on November 17, 2014; the landlord's responses with respect to the tenant's assertions in her email of November 17, 2014; and, the emails between the collection agent and the landlord regarding the tenant's mailing address.

### Analysis

Upon consideration of all of the evidence before me, I provide the following findings and reasons.

In this case, the tenant entered into a fixed term tenancy with an expiry date of August 31, 2014. As such the tenant was bound to fulfill the agreement by paying rent for that term. A tenant in a fixed term may not end the tenancy unless the tenant obtains an order from the Director or the tenant ends the tenancy pursuant to section 45(3) of the Act.

Under section 45(3) of the Act, a tenant may end a fixed term early if the landlord has breached a material term of the tenancy agreement and the landlord fails to correct the breach within a reasonable time after receiving written notice of the breach. The Act also conveys to tenants the right to quiet enjoyment of the rental unit and residential property and the courts have previously found that a breach of quiet enjoyment constitutes a breach of a material term of a tenancy agreement. A breach of quiet enjoyment includes unreasonable disturbance or significant interference by other occupants of the property, or where the landlord sits idly by and allows the offending conduct to continue.

Upon review of the tenant's notice dated March 31, 2014 and the email she wrote to the collection agent on November 17, 2014 it would appear that the tenant pointed to issues with respect to her health and safety and that of her son in her decision to end the tenancy; however, the tenant also referred to a warning letter the landlord had issued to her with respect to having a dog in the unit. The landlord also submitted in its response to the tenant's email of November 17, 2014 that the landlord did address the issue of inappropriate conduct of another tenant and problems in the building next door through the arbitrator process, which takes time to resolve. Since the tenant did not appear at the hearing or provide any written submissions with respect to the landlord's claims against her, the evidence before me is limited that provided to me by the landlord.

The only written notice from the tenant that is before me is the notice she issued on March 31, 2014. In that notice, she makes no request for the landlord to correct a breach and she does not put the landlord on notice that if the landlord does not correct the breach she will end the tenancy. Rather, it is evident from the letter that she has already decided to move out as evidenced by her statement, "We will be vacated by April 9<sup>th</sup> at the latest". As such, I find the letter of March 31, 2014 is insufficient to constitute written notice of a breach on part of the landlord and that if the breach was not corrected the tenant would end the tenancy. Therefore, I find the tenant did not end

the tenancy pursuant to section 45(3) of the Act and she remained bound by the fixed term tenancy agreement.

Since the tenant occupied the rental unit in April 2014 I award the landlord unpaid rent of \$775.00 for the month of April 2014. Since the tenant did not pay rent for April 2014 when it was due on April 1, 2014 I also award the landlord a late fee of \$25.00 as provided under terms of tenancy and as permitted under section 7 of the Residential Tenancy Regulations.

I note that the tenant authorized the landlord to deduct the \$300.00 lease break fee from the security deposit by way of her notice of March 31, 2014. Upon review of the lease break fee clause in the tenancy agreement, I am also satisfied that the lease break fee constitutes a liquidated damages clause as a means to recover the costs associated to the landlord's efforts to re-rent the unit earlier than the expiry of the fixed term and it is not a penalty. Therefore, I award the landlord \$300.00 as liquidated damages.

I accept the landlord's undisputed evidence that the rental unit was not sufficiently cleaned and I award the landlord cleaning costs of \$100.00 as supported by the move-out inspection report and the invoice provided by evidence.

As provided in Residential Tenancy Policy Guideline 1 a tenant is expected to have carpets cleaned even if their tenancy was less than one-year if the tenant had an uncaged animal in the rental unit. I accept the landlord's undisputed evidence that the tenant had a pet cat in the rental unit and the tenant failed to have the carpets cleaned. Therefore, I grant award the landlord \$89.25 for carpet cleaning.

I have reviewed the landlord's evidence as to efforts to advertise the unit for rental after the tenant gave notice to the landlord and I am satisfied that the landlord took reasonable steps to mitigate loss of rental income as required under section 7 of the Act. Therefore, I grant the landlord's request to recover loss of rent for the months of May and June 2014 from the tenant and I award the landlord \$1,550.00 for loss of rent.

As the landlord was successful in this Application, I also award the landlord recovery of the \$50.00 filing fee paid for this Application.

Pursuant to section 72 of the Act, I authorize the landlord to retain the tenant's security deposit and pet damage deposit in partial satisfaction of the amounts awarded to the landlord.

In light of all of the above, I provide the landlord with a Monetary Order calculated as follows:

Unpaid rent: April 2014	\$ 775.00
Late fee: April 2014	25.00
Loss of rent: May and June 2014	1,550.00
Liquidated damages (lease break fee)	300.00
Cleaning costs	100.00
Carpet cleaning	<u>89.25</u>
Sub-total	\$2,839.25
Plus: Filing fee	50.00
Less: security deposit	(387.50)
Less: pet damage deposit	<u>(387.50)</u>
Monetary Order	\$2,114.25

To enforce the Monetary Order it must be served upon the tenant and may enforce it in Provincial Court (Small Claims) as an Order of the court.

#### Conclusion

The landlord has been authorized to retain the tenant's security deposit and pet damage deposit and the landlord has been provided a Monetary Order for the balance of \$2,114.25 to serve and enforce as necessary.

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: July 16, 2015

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Residential Tenancy Branch

