



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOLLYBURN PROPERTIES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes          mnsd, ff

### Introduction:

The landlord applies for a monetary award from the tenant, related to the early ending of a fixed term tenancy agreement, and also seeks to retain the tenants' security deposit.

### Issues to be decided:

Is the landlord entitled to such compensation from the tenant?

### Background and Evidence:

The parties entered into a one year, fixed term tenancy agreement for the subject premises, to begin February 1, 2015. Monthly rent was \$1,150.00. A security deposit was paid in the sum of \$575.00. The tenancy agreement included a liquidated damages clause, to the effect that if the tenant prematurely ended the tenancy, the tenant would pay the landlord the sum of \$805.30 as liquidated damages. The tenant felt unable to afford the rent, and he located a replacement tenant who moved in on February 12. The tenant preferred that the replacement tenant enter into his own lease, rather than be the tenant's assignee. The landlord and replacement tenant negotiated their own lease effective March 1, 2015.

The landlord now seeks liquidated damages from the tenant, as agreed to in the lease, although the landlord waives a claim for any amount beyond \$575.00. The tenant opposes the claim, on the ground that he located the replacement tenant.

### Analysis:

The liquidated damages clause in the lease agreement is an enforceable provision. It is fair to conjecture in general terms that if a tenant were to end a fixed term tenancy prematurely, a landlord would expend time and money on posting signage for vacancies, in running an advertisement for an empty unit, in checking references for new tenants, and in preparing the paper work for the ending of one tenancy and the start of another. A sum of \$805.30 is not an unreasonable or extravagant amount to claim for such costs related to ending the tenancy early, and I do not find the liquid damages provision to be an unconscionable term of the tenancy agreement. I find that this clause was a genuine pre-estimation of the damages, agreed to be paid by the tenant if he terminated the agreement prematurely.

It is true that the tenant located a replacement tenant, which certainly prevented a claim for any loss of rent. The tenant nevertheless chose to end his tenancy, rather than assign or sublet his

tenancy. This choice was a benefit to the tenant in terms of having no responsibilities or obligations as with the replacement tenant, but nevertheless triggered work of the landlord to qualify the new tenant, and resulted in the early ending of the tenant's agreement. Given that the liquidated damages provision is a pre-estimation of damages by both parties triggered by an early ending of the lease agreement, and given that the lease in fact ended prematurely due to a choice entirely by the tenant and not by the landlord, the tenant must be found bound by his agreement to pay these damages to the landlord. Ordinarily this would qualify the landlord to seek an award of the liquidated damages specified in the agreement. The landlord however, elects to waive any amount of the damages entitled to above the sum of \$575.00, in part in recognition that the tenant found a replacement tenant. I consider this to be a unilateral election made by the landlord to limit his claim, and honour that election. The sum of \$575.00 is awarded. As the landlord is successful with this claim, I also award the recovery of the landlord's \$50.00 filing fee from the tenant. The total sum awarded is therefore \$625.00.

The landlord also applies for an order to retain the \$575.00 deposit. I note that the landlord's claim is properly made within 15 days of receipt of the tenant's forwarding address, and as the deposit is less than the award made, retention is appropriate.

Conclusion:

I order pursuant to section 38(1) that the full amount of the security deposit of \$575.00 be retained by the landlord, in partial satisfaction of the monetary award noted above. I further order that the remaining balance of the award due to the landlord, equalling \$50.00, be paid immediately by the tenant to the landlord.

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 07, 2015

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Residential Tenancy Branch

