



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNDC, MNR, MNSD, FF

### Introduction

This hearing dealt with a landlord's application for a Monetary Order for damage to the rental unit; unpaid rent, damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord provided a registered mail receipt, including tracking number, as proof the hearing documents were sent to the tenant at his forwarding address on January 16, 2015. The forwarding address appeared on the move-out inspection report. The landlord testified the registered mail was returned as unclaimed and then the landlord re-sent the package via regular mail. Section 90 of the Act deems a person to be in receipt of documents five days after mailing even if the person does not accept or pick up their mail so that a party cannot avoid service. Based upon the above, I find the tenant to be deemed served with the hearing documents and I proceed to consider the landlord's claims.

### Issue(s) to be Decided

1. Has the landlord established an entitlement to recover the amounts claimed against the tenant?
2. Is the landlord authorized to retain the tenant's security deposit?

### Background and Evidence

The tenant first entered into a tenancy agreement for the subject rental unit starting September 1, 2013. Effective September 1, 2014 the parties entered into another tenancy agreement that was for a fixed term set to expire April 30, 2015. The tenant was required to pay rent of \$1,050.00 on the 1<sup>st</sup> day of every month. The tenant had paid a security deposit of \$525.00.

The landlord submitted that on December 2, 2014 the tenant telephoned the landlord's office to inform the landlord he was ending the tenancy at the end of December 2014.

The tenant returned possession of the rental unit to the landlord on December 30, 2014 and the landlord testified that a move-out inspection report was completed on that date with the tenant present.

The landlord attempted to collect rent for January 2015 by way of a pre-authorized debit but it was not successful due to insufficient funds in the account. The landlord re-rented the unit part way through the month of January 2015 and the incoming tenant paid pro-rated rent in the amount of \$812.90.

Below, I have summarized the landlord's claims against the tenant.

### **Unpaid Rent**

The landlord submitted that the tenant breached his fixed term tenancy agreement by ending the tenancy early. The landlord submitted that the tenant would have been advised when he called into the landlord's office that he would be responsible for paying rent until the end of the fixed term or until such time the unit was re-rented. Since the landlord was able to collect pro-rated rent for the month of January 2015 from the incoming tenants, the landlord seeks to recover the balance of \$237.10 from the tenant.

### **Late fee and NSF fee**

The landlord pointed to the tenancy agreement which provides that the landlord may charge a late fee and NSF fee of \$25.00 each. The landlord submitted that the tenant was obligated to pay rent for January 2015 and since the pre-authorized debit was returned the landlord seeks to collect the late fee and NSF fee of \$25.00 each.

### **Liquidated damages**

The landlord seeks to recover liquidated damages of \$525.00 because the tenant ended the tenancy before the fixed term expiry date. The landlord pointed to the tenancy agreement that provides the tenant must pay such an amount in these circumstances.

### **Cleaning and carpet cleaning**

The landlord seeks to recover \$50.00 for additional cleaning that was required at the end of the tenancy and pointed to the move-out inspection report and the cleaning invoice as support for this claim.

The landlord seeks to recover \$136.50 for carpet cleaning from the tenant since he occupied the rental unit greater than one year and he did not clean the carpets before he vacated. The landlord provided a copy of the carpet cleaning invoice in support of the amount claimed.

**Repairs**

The landlord seeks to recover \$110.00 from the tenant since a light fixture was broken during the tenancy. The landlord pointed to the move-out inspection report and the invoice for the repair as evidence for this claim.

**Parking pass**

The landlord seeks \$100.00 from the tenant for the tenant's failure to return both of the parking passes he was provided for the property. The landlord described the parking pass as being a hard plastic pass that is displayed in a vehicle so that the tenant or his occupant or guest may park on the property. The landlord submitted evidence that another parking pass had to be purchased from the strata council at a cost of \$100.00.

**Analysis**

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

**Unpaid and/or loss of rent**

I have reviewed the tenancy agreement signed by the parties and I accept that the tenant had entered into a fixed term tenancy with the landlord that obligated him to continue the tenancy until April 2015. The Act provides very limited circumstances when a tenant may end a fixed term tenancy earlier than the expiry date of a fixed term.

The tenant did not appear or otherwise present any submissions that established an entitlement to end the tenancy early. In such cases, the landlord may seek recovery of loss of rent from the tenant for the remainder of the fixed term or until such time the unit is re-rented, provided the landlord takes reasonable efforts to mitigate its losses.

Having heard the landlord re-rented the unit part way through January 2015 I am satisfied the landlord took reasonable action to mitigate its losses.

In light of the above, I award the landlord loss of rent in the amount of \$237.10 from the tenant for the month of January 2015.

**NSF and late fees**

The tenancy agreement provided for my review includes a provision that permits the landlord to collect NSF and late fees in the amount of \$25.00 each and I find that the provision is compliant with section 7 of the Residential Tenancy Regulations.

Despite the above, section 44 of the Act provides for ways a tenancy ends and provides that a tenancy ends when a tenant vacates or abandons a rental unit. The tenant vacated and returned possession of the rental unit to the landlord on December 30, 2014. As such, I find the tenancy ended as of December 30, 2014. While the landlord was entitled to recover loss of rent from the tenant after the tenancy ended, I find the landlord is not entitled to collect NSF and late fees for months after the tenancy has ended. Therefore, I make no award for NSF and late fees for the month of January 2015.

### **Liquidated damages**

Residential Tenancy Policy Guideline 4 provides for liquidated damages. 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 fixed term by the tenant. If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum unless the sum is found to be a penalty. Upon review of the liquidated damages clause in the tenancy agreement before me, I accept the amount payable under the clause to be a reasonable pre-estimate and that it is not a penalty. Therefore, I grant the landlord's request to recover liquidated damages of \$525.00 from the tenant.

### **Cleaning and carpet cleaning**

The cleaning invoice indicates \$50.00 was charged to clean the oven, blinds and closet door in the master bedroom. These areas are indicated as being dirty on the move-out inspection report. Therefore, I grant the landlord's request to recover cleaning costs from the tenant.

Residential Tenancy Policy Guideline 1 provides that a tenant is usually held responsible for steam cleaning or shampooing the carpet if they occupied the rental for more than one year. In this case, the tenant was in possession of the rental unit for more than one year and the move-out inspection report indicates that the tenant did not provide the landlord with evidence that he had the carpets cleaned. I find the landlord has supported the amount claimed for carpet cleaning and I grant the landlord's request to recover carpet cleaning costs from the tenant.

### **Repairs**

The Act provides that a tenant is responsible for repairing any damage that they, or persons they permit on the property, cause by way of their actions or neglect. The move-out inspection report indicates the light fixture in the master bedroom was "broken. Cover missing." The landlord provided a copy of an invoice to demonstrate

that replacing the light fixture cost \$110.00. However, the landlord made no allowance for depreciation of the original light fixture.

Awards for damages are intended to be restorative. Accordingly, where an item has a limited useful life, it is appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements*. The policy guideline provides that light fixtures have a limited useful life of 15 years.

In the absence of any evidence from the landlord to demonstrate the age of the original light fixture, I find it appropriate to reduce the landlord's claim by 50%. Therefore, I award the landlord \$55.00 for damage to the light fixture.

### **Parking pass**

The Act requires a tenant to return all keys and any other means of access to the rental unit and residential property to the landlord at the end of the tenancy. The landlord described the parking pass as a hard plastic pass that is displayed in a vehicle so that a tenant, or the tenant's occupant or guest, may park on the property. I accept that the parking pass described to me constitutes a "means of access" to the property and that the tenant was obligated to return the pass to the landlord at the end of the tenancy.

The move-out inspection report indicates that one pass was not returned by the tenant. The landlord also provided evidence that a replacement pass has to be obtained from the strata council at a cost of \$100.00.

In light of the above, I grant the landlord's request to recover \$100.00 from the tenant for the parking pass that was not returned to the landlord at the end of the tenancy.

### **Filing fee, Security Deposit and Monetary Order**

Given the landlord was largely successful in this application; I award the landlord recovery of the \$50.00 paid for this application.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord by way of this decision.

In accordance with all of my findings and awards made in this decision, I provide the landlord with a Monetary Order calculated as follows:

Loss of Rent: January 2015	\$ 237.10
Liquidated damages	525.00
Cleaning	50.00
Carpet cleaning	136.50
Repairs	55.00
Parking pass	100.00
Filing fee	50.00
Less: security deposit	<u>(525.00)</u>
Monetary Order	\$ 628.60

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

### Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$628.60 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 31, 2015

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Residential Tenancy Branch

