



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Royal LePage Northstar Realty  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD

### Introduction

This was a hearing with respect to the tenant's application for a monetary order. The hearing was conducted by conference call. The tenant and the landlord's representative called in and participated in the hearing.

### Issue(s) to be Decided

Is the tenant entitled to a monetary award, including the return of a portion of the security deposit?

### Background and Evidence

The rental unit is a strata title apartment in Surrey. The tenant rented the unit with a co-tenant for a one year fixed term commencing June 1, 2014. The monthly rent was \$1,300.00 and the tenants paid a security deposit of \$650.00 at the start of the tenancy. One of the terms of the agreement provided that if the tenants did not remain for the full term of the tenancy agreement, they would be charged \$400.00 plus one month's rent and any advertising costs as liquidated damages.

In September, 2014, Ms. C.R., the applicant's co-tenant notified the landlord that she wanted to move from the rental unit and wished to be relieved from her obligations under the tenancy agreement. The landlord signed an agreement with C.R. to release her from the fixed term agreement effective October 1, 2014. As recorded in the agreement, C.R. paid the landlord \$700.00 by cheque and the landlord received a further \$75.00 in cash and retained \$325.00 from the security deposit held by the landlord.

After C.R. moved out the applicant remained in the rental unit, but he did not sign a new tenancy agreement with the landlord. He paid rent for November and December. He told the landlord that he intended to move out at the end of December. The landlord found a new tenant to rent the unit effective January 1, 2015. The landlord told the tenant that he would be responsible for paying a reduced liquidated damage amount of \$200.00 if he wished to break the lease.

After the tenant moved out the landlord returned the sum of \$125.00 to the tenant, this being the \$325.00 remaining as a security deposit, less the \$200.00 as liquidated damages charged to the tenant.

The tenant applied for dispute resolution to recover the sum of \$450.00. the tenant submitted that he should have received the return of the entire security deposit of \$650.00, less the \$200.00 liquidated damages amount claimed by the landlord.

### Analysis

The landlord entered into a fixed term tenancy with the applicant and C.R. as co-tenants. The landlord entered into an agreement with C.R. to release her from the agreement. The applicant was not a party to that agreement and I find that by ending the tenancy with C.R., the landlord effectively ended the fixed term tenancy for both co-tenants. The landlord did not make a new agreement with the applicant, but continued to accept rent payments for November and December.

I find that the landlord was not entitled to claim a liquidated damage amount from the applicant because it had already charged his co-tenant the full liquidated damage amount and ended the fixed term tenancy. The applicant did not sign a new tenancy agreement with the landlord and he became a month to month tenant from October 1<sup>st</sup> onwards. The landlord succeeded in re-renting the unit to a new tenant commencing January 1<sup>st</sup> and there is no claim for unpaid rent or loss of revenue against the tenant.

The tenant has received a payment of \$125.00 from his security deposit. I find that he is entitled to the return of the balance of the deposit in the amount of \$200.00, being the amount sought to be retained by the landlord as liquidated damages.

### Conclusion

I have allowed the tenant's claim in the amount of \$200.00. The tenant is entitled to recover the \$50.00 filing fee for his application, for a total award of \$250.00 and I grant

the tenant an order under section 67 in the said amount. 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: August 04, 2015

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Residential Tenancy Branch

