



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF

### Introduction

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

### Issue(s) to be Decided

Is the landlord entitled to a monetary award and an order to retain the tenant's security deposit?

### Background and Evidence

The rental unit is an apartment in Vancouver. The tenancy began on March 1, 2015 for a one year term, with rent in the amount of \$1,350.00 payable on the first of each month. The tenant paid a security deposit of \$675.00 at the start of the tenancy. The tenancy agreement contained the following provision:

**Early end to Tenancy:** if the tenant ends the fixed term tenancy before the end of the original term as set out above, the landlord may, at the landlords' option treat this Tenancy Agreement as being at an end. In such event the sum of \$675.00 shall be paid to the landlord as liquidated damages and not as a penalty, to cover the administration costs of re-renting the said premises. The landlord and the tenant acknowledge and agree that the payment of the said liquidated damages shall not preclude the landlord from exercising any further right or pursuing another remedy available in law or in equity, but not limited to, damages to the premises and damages as a result of rental income due to the tenant's breach of the terms of this agreement. (reproduced as written)

On April 1, 2015 the tenant notified the landlord that she would be moving out of the rental unit before the end of the fixed term effective May 31, 2015. In her e-mail to the landlord's representative, the tenant asked whether she would be charged a \$675.00 penalty if she found someone to take the apartment for June 1<sup>st</sup>, 2015. The tenant repeated this question several times. She did not receive any response, apart from a statement that: "Once all info is sent to the management office we will get an answer re deposit."

In this application the landlord claimed payment of the sum of \$675.00. The landlord claimed the sum of \$120.00 for carpet cleaning and requested the retention of the balance of the deposit in the amount of \$555.00, in full and final satisfaction of the landlord's claim for liquidated damages.

The tenant objected to the landlord's claim, principally because she advertised the rental unit for rent in order to ensure that it was re-rented effective June 1<sup>st</sup>. The tenant's position is that the landlord has lost no rental income and should not be entitled to retain her deposit.

The landlord's position is that the liquidated damage provision is intended to compensate the landlord for his efforts to re-rent the unit when the tenant has ended the tenancy before the end of the fixed term. It is not a payment to compensate the landlord for loss of rental income. The landlord submitted that the tenant acted prudently to assist the landlord to re-rent the unit because she thereby helped to ensure that she would not be liable for a loss of rental income, in addition to the liquidated damage claim.

### Analysis

The tenancy agreement was for a fixed term. The tenant ended the tenancy before the end of the fixed term. The landlord avoided directly answering the tenant's questions, but did not waive the liquidated damage clause in the tenancy agreement and I find that, although the tenant assisted with the task of re-renting the unit, she is not relieved from the liquidated damage provision, having ended the tenancy early.

The landlord has limited his claim to the amount of the deposit remaining after deduction of a \$120.00 carpet cleaning charge. I allow the claim for carpet cleaning in the stated amount and I order that the landlord retain the balance of the security deposit in the amount of \$555.00 in full and final satisfaction of his claim for liquidated damages. I make no order with respect to the recovery of the filing fee for this application.

Conclusion

The landlord's claim has been allowed in the amount of \$675.00 and the landlord has been ordered to retain the security deposit in full and final satisfaction of the claim.

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: December 31, 2015

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Residential Tenancy Branch

