



# 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 tenants have filed an application seeking the return of the security deposit and the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

### Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

### Background, Evidence

The tenants' testimony is as follows. The tenancy was to begin on October 1, 2015 for a fixed term of one year. The parties signed a tenancy agreement on September 1, 2015. The tenants were obligated to pay \$1400.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$700.00 security deposit. The tenant stated that due to personal circumstances, he decided not to move into the unit and advised the landlord on September 5, 2015 of his decision. The tenant and the landlord signed off on a move out condition inspection report. In that report the tenant agreed to relinquish his security deposit plus an additional \$105.33 to cover the liquidated damages clause as per their tenancy agreement. The tenant stated that about a month later he changed his mind and felt the liquidated damages costs were manufactured by the landlord and that they did not incur any costs. The tenant feels that the landlord should return the \$805.33 back to him.

The landlords' testimony is as follows. The landlord stated that the tenant was the one that broke the lease and that he was duly informed of his responsibilities of doing such when the tenant signed the tenancy agreement. The landlord stated that the tenant was the one that was in breach of the contract and that the landlord has done nothing wrong. The landlord stated that they should be able to retain the \$805.33.

## Analysis

The landlord submitted documentation that outlines the costs and calculations for their liquidated damages. The landlord explained in great detail the process the landlord goes through to find a suitable tenant. In addition, the landlord submitted the tenancy agreement that reflects the liquidated damages costs and the “signed off” move out inspection report that illustrates that the tenant agreed that the landlord was entitled to \$805.33 for the liquidated damages. The tenant agreed that the landlord was entitled to retain the \$700.00 security deposit and made a further payment of \$105.33 to satisfy the liquidated damages on September 5, 2015.

Residential Tenancy Policy Guideline 4 addresses the issue before me as follows:

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 tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. In considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into.

There are a number of tests to determine if a clause is a penalty clause or a liquidated damages clause. These include:

- A sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach.
- If an agreement is to pay money and a failure to pay requires that a greater amount be paid, the greater amount is a penalty.
- If a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.

If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent.

Generally clauses of this nature will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum. Further, if the clause is a penalty, it still functions as an upper limit on the damages payable resulting from the breach even though the actual damages may have exceeded the amount set out in the clause.

After reviewing the documentation submitted by each party and considering their testimony, I find that the liquidated damages clause to be valid and that the tenant was required to pay it for “breaking the fixed term tenancy”. Based on the above the tenant has not been successful in their application.

### Conclusion

The tenants’ application is dismissed in its entirety.

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: April 14, 2016

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Residential Tenancy Branch