



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Nystar Developments Corp Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FF, MNSD

### Introduction

This decision deals with two applications for dispute resolution, one brought by the tenants, and one brought by the landlord(s). Both files were heard together.

The tenants' application is a request for an Order for return of the \$775.00 security deposit.

The landlord's application is a request for a monetary Order for \$678.68 and recovery of the \$100.00 filing fee. The landlord is also requesting an Order to retain the full security deposit of \$775.00 towards this claim.

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

The parties were affirmed.

### Issue(s) to be Decided

The issue is whether or not the landlord has established monetary claim against the tenants, or whether the tenants full security deposit should be returned.

### Background and Evidence

The tenants paid a security deposit of \$775.00 on February 5, 2014, and moved into this rental unit on March 1, 2014.

The tenants vacated the rental unit on April 30, 2015, one month short of the end date of the fixed term tenancy agreement.

The landlord is requesting an Order that the tenants be held liable for the cost of re-renting the unit since the tenants vacated prior to the end of the tenancy.

The landlord's agent stated that she always charges the landlord 3% of the monthly rent for the term of the lease and the landlord has to pay that amount each time she re-rents the unit for him.

The landlord's agent believes that the tenants should be held liable for this cost as the landlord had to rent the unit earlier than he would have had to, had the tenants stayed to the end of the fixed term lease.

The tenant argued that they only vacated the rental unit one month prior to the end of the lease and therefore he does not believe he should be held liable for the full cost of re-renting the unit for a 13 month term, as the landlord would have had to pay the re-renting fee one month later anyway.

The tenants further argued that the landlord actually made money, because the landlord was able to re-rent the unit for \$100.00 more for the month of May 2015 than they would have had to pay.

The tenant therefore believes that their full security deposit of \$775.00 should be returned.

### Analysis

In the tenancy agreement, signed by the tenants, there is a liquidated damages clause that states:

- *If the tenants ends the fixed term tenancy, or is in breach of the Residential Tenancy Act or a material term of this Agreement the causes the landlord to end the tenancy before the end of the term as set out above or any subsequent fixed term the tenants will pay the landlord the sum of \$1550.00 as liquidated damages and not as a penalty. Liquidated damages are and agreed pre-estimate of the landlords cost of re-renting the rental unit and must be paid in addition to any*

*other amounts owed by the tenants such as unpaid rent or for damage to the rental unit or residential property.*

In this case, it is my finding that the liquidated damages amount is not a genuine pre-estimate of the loss, as the landlord already knew that the actual amount would be 3% of the rent for the term of the tenancy, which is quite a bit less than the \$1550.00 amount listed in the tenancy agreement for liquidated damages.

It is my decision therefore that the liquidated damages clause is not enforceable and therefore I must look to whether or not the landlord suffered any actual loss as a result of the tenants breach of the tenancy agreement.

In this case, the only actual loss was the 3% of the one month extra rent that the landlord had to pay to the rental agent, due to the tenants breaching the tenancy one month prior to the end of the tenancy agreement. Therefore since the rental unit re-rented at \$1650.00 per month, the landlord had to pay an extra \$49.50 to the rental agent for that extra month, added to the subsequent lease.

The landlord however rented the unit for \$100.00 more for the month of May 2015 than he would have collected from these tenants had the tenants stayed to the end of the lease.

Therefore, it is my finding that the landlord has not shown that he suffered any loss whatsoever as a result of the breach of this tenancy agreement and, in fact, the landlord has come out ahead, in the amount of \$50.50.

I therefore will not allow the landlords claim, and will be issuing an Order for the return of the tenant's full security deposit.

### Conclusion

Pursuant to section 62(4) the landlord's application is dismissed in full without leave to reapply.

Pursuant to section 67 of the Residential Tenancy Act, I have allowed the tenants full claim and have issued an Order for the landlord to pay \$775.00 to the tenants.

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 29, 2016

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Residential Tenancy Branch