



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord stated that the tenant was served with the notice of hearing package via Canada Post Registered Mail on April 21, 2016. The tenant confirmed receipt of this package. The landlord also stated that the submitted documentary evidence was served via Canada Post Registered Mail on August 30, 2016 to the tenant. The tenant confirmed receipt of the landlord's submitted documentary evidence. The tenant stated that he did not serve the landlord with his submitted documentary evidence because he did not know that he needed to. The tenant's submitted documentary evidence shall be excluded for use in this hearing as the tenant has failed to serve the landlord as per sections 88 and 89 of the Act.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation for loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on May 1, 2015 on a fixed term tenancy ending on April 30, 2016 as shown by the submitted copy of the signed tenancy agreement dated March 23, 2015. The monthly rent was \$950.00 payable on the 1<sup>st</sup> day of each month and security deposit of \$475.00 was paid.

The landlord seeks a monetary claim of \$350.00 as liquidated damages for the tenant breaching the fixed term tenancy on March 31, 2016 instead of ending it on April 30, 2016. The landlord referred to section 1 of the Addendum to Residential Tenancy Agreement which states,

*The Tenant(s) agrees to an initial 12 month fixed term tenancy. If the Tenant(s) breach a material term of this Agreement that causes the Landlord to end the tenancy before the end of any fixed term, or if the Tenant(s) provides the Landlord with notice, whether written, oral or by conduct, of an intention to breach this Agreement and end the tenancy by vacating and does vacate before the end of any fixed term, the Tenant(s) will pay to the Landlord the sum of \$475.00 as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit...*

The landlord clarified that her company charges only \$350.00 for liquidated damages and has lowered the original \$475.00 amount to \$350.00.

The tenant disputes the landlords claim stating that the landlord suffered no losses for rent or any costs associated with re-renting the unit. The tenant stated that he posted an ad online to re-rent the unit and had showed the unit to approximately 30 people. The tenant stated that as a result of his efforts a new tenant was obtained for April 1, 2016.

The landlord stated that she is unaware of the tenant's efforts and could only state that the landlord's normal actions would be to advertise on online and on their own website, but confirmed that a new tenant was obtained for April 1, 2016. The landlord was unable to provide any evidence regarding any costs for re-renting the unit or any details of the landlord's efforts to re-rent the unit in this case.

### Analysis

Based upon the undisputed affirmed testimony of both parties the tenant breached the fixed term tenancy by ending it prematurely on March 31, 2016 instead of April 30, 2016. It is also clear that a new tenant was obtained for April 1, 2016. The landlord suffered no losses in rent.

I accept the undisputed affirmed evidence of the tenant and find that the tenant was proactive in his efforts to obtain a new tenant for April 1, 2016. The tenant provided undisputed affirmed evidence that he had showed the unit to more than 30 people and obtained applications for rent and in turn referred each applicant to the landlord. The landlord was not able to dispute the claim of the tenant's efforts to re-rent or provide any details of any losses or costs associated in re-renting the unit. The landlord provided insufficient details of their efforts to re-rent the unit. As such, I find that the landlord has failed to establish a claim for liquidated damages. The landlord's application is dismissed.

The landlord is ordered to return the \$475.00 security deposit.

### Conclusion

The landlord's application is dismissed.

The tenant is granted a monetary order for \$475.00.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial 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: September 21, 2016

---

Residential Tenancy Branch