



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NPR LIMITED PARTNERSHIP  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

MNSD, MNDC, FF

### **Introduction**

This hearing was convened in response to the landlord's application under the *Residential Tenancy Act* (the Act) for dispute resolution, seeking to retain the security deposit and a monetary order for loss under the Tenancy Agreement, the Act, or Regulations, as well to recover the filing fee.

I accept the landlord's evidence that despite the tenant having been served with the application for dispute resolution and notice of hearing by *registered mail* in accordance with Section 89 of the Residential Tenancy Act (the Act) the tenant did not participate in the conference call hearing.

The landlord was given full opportunity to be heard, to present evidence and to make submissions.

### **Issue(s) to be Decided**

Has the tenant breached the Act, Regulations or Tenancy Agreement?  
Is the landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

The tenancy agreement began July 01, 2015 as a 1 (one) year fixed term tenancy ending June 30, 2016. The monthly rent payable was set at \$765.00 per month. At the outset of the tenancy the landlord collected a security deposit and pet damage deposit in the sum of \$765.00 which the landlord retains \$435.00 in trust. The tenancy ended when the tenant vacated earlier than the end of the fixed term contract, on March 31, 2016. The landlord testified that at the end of the tenancy the parties agreed to a

deduction from the security deposit in the amount of 382.50 in satisfaction of the *liquidated damages* portion of the contractual Tenancy Agreement. Despite the parties conducting a mutual move out condition inspection and associated report the tenant did not agree with the landlord retaining a portion of the deposits for cleaning therefore did not sign the report. The landlord provided the report noting that areas of the rental unit were left unclean. The landlord also provided a work order for the cleaners highlighting the cleaning done and claiming 2 hours of cleaning time resulting in a charge of \$52.50.

The landlord provided evidence of the signed Tenancy Agreement in which the tenant confirmed by their signature *Liquidated Damages* of \$382.50 if the tenant ended the fixed term tenancy early in breach of the contractual Tenancy Agreement.

### **Analysis**

On preponderance of all the evidence, including all oral evidence in this matter, and on a balance of probabilities I have reached a decision as follows.

A Tenancy Agreement is, effectively, a contract for a tenancy. I find the tenant signed the contractual Tenancy Agreement including confirming their consent to the landlord's clause of the pre-estimate of costs for re-renting the unit in the event the tenant determined to end the tenancy earlier than the terms afforded by this contract.

In the absence of the tenant appearing in the hearing and confirming their consent to the landlord's claim for liquidated damages I find as follows. Residential Tenancy Policy Guidelines respecting *Liquidated Damages* state that in order for a landlord's claim of *Liquidated Damages* to be enforceable, their claim in the Tenancy Agreement must be a *genuine pre-estimate of loss at the time the contract is entered into*. I find that by definition this means the landlord must reasonably reflect in their pre-estimate what costs they foresee they could incur following a breach of the Agreement. If on claim the clause is determined to be a penalty it will not be enforceable. However, the Policy stipulates that if the *Liquidated Damage* clause is determined to be valid the tenant must pay the stipulated amount in the Agreement, even where the eventual actual costs do not amount to the pre-estimate, or *are negligible or non-existent* – as per the contract. I find the landlord's claim respecting *Liquidated Damages* clause is not extravagant and as a result is not a penalty and therefore enforceable. Effectively I find the landlord's claim for *liquidated damages* is valid. I find the tenant ended the Tenancy Agreement early and in doing so breached the provisions within the agreement, and Section 45 of the Act - triggering the landlord's entitlement to claim *Liquidated Damages*.

Therefore, I find that the landlord has established a monetary claim for the *Liquidated Damages* in the amount of \$382.50. I also find the landlord's claim for cleaning as unopposed and as supported in evidence as valid. I grant the landlord the supported amount requested: \$52.50. The landlord is further entitled to recover their filing fee of \$100.00, for a total entitlement of **\$535.00**. The deposit(s) held will be off-set from the award made herein.

Liquidated damages	\$382.50
Cleaning	\$52.50
Filing Fee	\$100.00
<i>Less Security Deposit held in trust</i>	<i>-435.00</i>
<b>Monetary Award to landlord</b>	<b>\$100.00</b>

**I Order** that the landlord retains the deposits held in trust in the amount of \$435.00, in partial satisfaction of the claim, and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

The landlord's application is granted.

*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: October 17, 2016

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Residential Tenancy Branch

