



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MNDC, FF

### Introduction

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

- an order of possession for cause pursuant to section 55;
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants and landlord's agent (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed she was an agent of the landlord named in this application, and had authority to speak on the landlord's behalf.

The tenants confirmed receipt of the landlord's application and evidence package for dispute resolution. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were duly served with the application and evidence package. The tenants confirmed they did not provide any documentary evidence for this hearing.

### Preliminary Issue

At the outset of the hearing the parties testified that the tenants vacated the rental unit on May 1, 2016. Consequently, the landlord is no longer seeking an order of possession and this portion of the landlord's application is dismissed without leave to reapply.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord authorized to recover the filing fee for this application from the tenants?

### Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on October 1, 2015 on a fixed term until September 30, 2016. Rent in the amount of \$1,500.00 was payable on the first of each month. The tenants remitted a security deposit in the amount of \$750.00 and pet deposit in the amount of \$750.00 at the start of the tenancy.

The tenancy agreement contained the following provision:

#### BREAKING THE FIXED TERM TENACY AGREEMENT

If the Tenants are evicted for breaching the Tenancy Agreement or the Tenants break the fixed term Tenancy Agreement before the end date for any reason, the Tenants may be subject to reimburse the Landlord for liquidated damages for the costs incurred to re-rent the unit as well as gross rental loss until the end of the rental agreement.

...

I understand that if I break this fixed term Tenancy Agreement or I am evicted for breach of this Tenancy Agreement I will be held responsible for the liquidated damages incurred to find a new tenant, return the rental unit to the condition it was upon the beginning of my tenancy and rental loss for the remainder of my term. I understand the estimated minimum liquidated damages cost to be \$750.00 which is 50% of 1 Months rental amount ...

[Reproduced as written]

On March 23, 2016 the landlord posted a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") to the tenants' door. In response to the 1 Month Notice, the tenants vacated the rental unit on May 1, 2016.

### Landlord Claim

The landlord contended that based on the liquidated damage clause in the signed addendum, the tenants are responsible for the \$787.50 property management fee incurred as a result of the eviction. The landlord has submitted a copy of the addendum and property management invoice.

The landlord seeks to recover the cleaning costs she incurred in the amount of \$109.73. The landlord has submitted a copy of the cleaning invoice.

The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenants.

### Tenants Reply

It is the tenants' position that they did not contravene the *Act* and the landlord did not have sufficient grounds to end the tenancy. The tenants acknowledge that instead of contesting the 1 Month Notice, the tenants simply vacated the rental unit.

The tenants testified that as per the signed addendum they were responsible for ensuring the unit was professionally clean upon move-out, however because the unit was not professionally cleaned upon move-in they did not have it professionally cleaned at move-out. The tenants testified that at the end of tenancy, they cleaned the unit themselves.

### Analysis

Although the tenants dispute the reasons for eviction and contend they did not breach the *Act*, at no time did they formally contest the 1 Month Notice through the Residential Tenancy Branch. Therefore the tenants accepted the 1 Month Notice, and a finding to determine the validity of the grounds to end the tenancy is not required.

Based on the testimony of the parties and submitted tenancy agreement, the parties had a fixed term tenancy that was scheduled to end on September 30, 2016. Because the tenants were evicted for breaching the tenancy agreement and the parties signed an agreement that included a liquidated damage clause, the tenants may be held liable for the amount stipulated in that clause.

In order to enforce a liquidated damage clause in a tenancy agreement or addendum, it must first be determined whether the clause is valid. Specifically it must be determined whether the amount agreed to is a genuine pre-estimate of the loss at the time the contract was entered into or a whether the amount constitutes a penalty.

Pursuant to Residential Tenancy Policy Guideline #4 Liquidated Damages, I find the liquidated damage clause in the addendum does not constitute a penalty as it is not extravagant in comparison to the greatest loss that could follow a breach, it does not indicate failure to pay results in a greater amount having to be paid and it does not require a single lump sum to be paid on occurrence of several events, some trivial some serious.

Instead, I find the liquidated damage clause is a genuine pre-estimate of the loss at the time the contract was entered into, thereby making the clause valid. Therefore, I find the landlord is entitled to recover the property management fee of \$750.00 plus tax for a total amount of \$787.50 from the tenants.

Based on the testimony of the tenants and the move-in condition inspection report, the unit was not professionally cleaned at the start of tenancy. The tenants testified that at the end of the tenancy, they cleaned the unit themselves. According to the move-out inspection report the unit was left "very clean." Based on this, I am satisfied the unit was left in a reasonable health, cleanliness and sanitary standard pursuant to section 32 of the *Act*. As the tenant is not responsible to clean the premises to a higher standard than set out in the *Act*, I find the landlord is not entitled to recover the cleaning cost in the amount of \$109.73.

As the landlord was partially successful in this application, I find that the landlord is entitled to recover \$50.00 of the \$100.00 filing fee paid for the application, for a total award of \$837.50.

### Conclusion

The landlord's application for an order of possession is dismissed without leave to reapply.

I issue a monetary order in the landlord's favour in the amount of \$837.50.

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 23, 2016

---

Residential Tenancy Branch

