



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REMAX MANAGEMENT SOLUTIONS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes FF, MNDC, MNR, MNSD

### Introduction

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

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

The hearing was conducted via teleconference and was attended by the landlord. No one was in attendance on behalf of the tenant.

The landlord gave sworn evidence that the tenant was served notice of this application and this hearing by having a witness present when personally serving the tenant on November 6, 2016.

Based on the undisputed testimony and submissions of the landlord I am satisfied that they served the tenant in accordance with section 89 of the Act on November 6, 2016 and I therefore continued in the absence of the tenant.

### Issue to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background, Evidence

The landlord's undisputed testimony is as follows. The tenancy began on September 1, 2016 and ended on November 3, 2016, however the tenancy was to end on May 31, 2017 as per the fixed term tenancy agreement signed by both parties. The tenants were obligated to pay

\$1650.00 per month in rent in advance and at the outset of the tenancy the tenants paid an \$850.00 security deposit. The landlord testified that on November 2, 2016 the tenant gave notice that he would be vacating the following day. The landlord testified that the tenant did not pay the rent for November. The landlord testified that despite his best efforts and aggressive advertising, he was unable to rent the unit for November but was able to rent it for December 1, 2016. The landlord is seeking the unpaid rent for November, \$625.00 liquidated damages as per the tenancy agreement and the recovery of the \$100.00 filing fee.

The landlord is applying for the following:

1.	Unpaid rent for November 2016	1,650.00
2.	Liquidated damages	625.00
3.	Filing Fee	100.00
4.		
5.	Less Deposits	-825.00
	Total	<b>\$1550.00</b>

### Analysis

#### Loss of Rent

I find that the landlord and tenant entered into a fixed term tenancy for the period from September 1, 2016 to May 31, 2017.

Subsection 45(2) of the *Act* sets out how a tenant may end a fixed term tenancy:

*A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*

- (a) is not earlier than one month after the date the landlord receives the notice,*
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

The above provision states that the tenant cannot give notice to end the tenancy before the end of the fixed term. If the tenant does, he could be liable for a loss of rent during the period when the unit cannot be re-rented. In this case, the tenant vacated the rental unit on November 3, 2016, before the completion of the fixed term on May 31, 2017. As such, the landlord is entitled to compensation for losses it incurred as a result of the tenant's failure to comply with the terms of his tenancy agreement and the *Act*.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the *Regulation* or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable, to re-rent the premises soon after receiving notice of the tenant's intention to vacate the rental unit. The landlord posted an online rental advertisement immediately and conducted showings to potential tenants. I am satisfied that the landlord discharged its duty under section 7(2) of the *Act* to minimize its losses.

The landlord seeks the rental loss for November 2016, the period during which the property could not be re-rented due to the tenant's breach. The liquidated damages clause of the tenancy agreement states that the landlord is not precluded from claiming a loss of rental income if liquidated damages are paid by the tenant. Accordingly, I find that the landlord is entitled to \$1650.00 for a loss for November rent from the tenant.

#### Liquidated Damages

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 this case, the liquidated damages clause is intended to compensate the landlord for losses resulting from the costs of re-renting the rental unit after the tenant's breach. The cost of re-renting a unit to new tenants is part of the ordinary business of a landlord. Throughout the lifetime of a rental property, a landlord must engage in the process of re-renting to new tenants numerous times. However, one important reason why a landlord enters into a fixed-term tenancy agreement is to attempt to limit the number of times the landlord must incur the costs of re-renting.

I find it more likely than not that, when a tenant breaches a fixed term tenancy agreement resulting in an early end to the tenancy, the landlord incurs the costs of re-renting earlier than it would have without the breach. This exposes the landlord to extra costs of re-rental. For that reason, I find there is a loss to the landlord associated with the tenant's breach. The next question is whether the \$625.00 amount specified in the tenancy agreement addendum is a genuine pre-estimate of that loss.

The landlord stated that the liquidated damages of \$625.00 are to cover administrative costs to list the rental unit online, show the rental unit to potential tenants, and collect and forward applications to the landlord for reference and credit checks. I find that this amount is a genuine pre-estimate of the loss. The tenant breached the fixed term tenancy agreement stating that he

is responsible for this cost; accordingly, I find that the landlord is entitled to \$625.00 for liquidated damages from the tenant.

### Conclusion

In summary, the landlord has been successful in the following claims:

1.	Unpaid rent for November 2016	1,650.00
2.	Liquidated damages	625.00
3.	Filing Fee	100.00
4.		
5.	Less Deposits	-825.00
	Total	<b>\$1550.00</b>

I order that the landlord retain the deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1550.00. This order may be filed in the Small Claims 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: May 08, 2017

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Residential Tenancy Branch