



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SOUTH ISLAND PROPERTY MANAGEMENT LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with a landlord's application for compensation for liquidated damages and loss of rent; and, authorization to retain all or part of the tenant's security deposit and/or pet damage deposit. The landlord named two co-tenants in filing this application but only served one of the tenants with a hearing package. A hearing package was sent to the female tenant via registered mail and successfully delivered on November 20, 2016. The landlord provided the registered mail tracking number as proof of service. I was satisfied the female tenant was duly served with notification of this proceeding; however, the male tenant was not served and he was excluded as a party to this dispute. I proceeded to hear the landlord's claims against the female tenant.

### Issue(s) to be Decided

Has the landlord established an entitlement to compensation for loss of rent and/or liquidated damages?

### Background and Evidence

The fixed term tenancy started on April 15, 2016 and was set to expire on April 30, 2017. The monthly rent was \$1,675.00 payable on the first day of every month. The landlord collected a security deposit of \$837.50 and a pet damage deposit of \$837.50. The tenants emailed the landlord informing the landlord that they had purchased a house and would be moving out. The landlord responded by informing the tenants that efforts would be made to re-rent the rental unit but the landlord would hold the tenants responsible for any losses related to the early end of the tenancy. The tenants vacated the rental unit on October 31, 2016. The landlord re-rented the unit effective November 15, 2016 and received \$837.50 in rent from the incoming tenant for the month of November 2016.

The landlord refunded \$554.16 of the tenants' deposits to the tenant and filed this claim seeking authorization to withhold the remaining balance of the deposits in the sum of \$1,120.84 for:

1. Liquidated damages of \$350.00
2. Loss of rent for November 2016 of \$770.84 (calculated as: 14 days x the annual per diem rental rate)

The landlord provided a copy of the tenancy agreement which includes a liquidated damages clause in term number 5. The landlord provided a copy of the condition inspection report; a copy of advertisements and a listing of showings of the property to show the efforts that were made to re-rent the unit.

During the hearing, the landlord withdrew the request to obtain a Monetary Order for recovery of the filing fee from the tenant.

### Analysis

Upon consideration of all of the unopposed evidence and submissions before me, I provide the following findings and reasons.

Where a tenant has a fixed term tenancy agreement, such as in this case, the tenant may be held liable to compensate the landlord for loss of rent during the remainder of the fixed term. Where a landlord seeks to hold a tenant responsible for loss of rent the landlord has an obligation to minimize losses. In this case, I find the tenant breached the tenancy agreement by ending the tenancy earlier than the fixed term expiry date. I am satisfied the landlord took reasonable action to minimize losses by advertising and showing the rental unit in a timely manner. I find the landlord actually suffered a loss of rent of \$837.50 for the month of November 2016; however, I grant the landlord's request to recover the lesser amount claimed of \$770.84 from the tenant.

Upon review of the tenancy agreement, I accept that the parties agreed that the tenant may be held responsible to pay liquidated damages of \$350.00 in the event the tenant ended the fixed term tenancy early. Residential Tenancy Policy Guideline 4 provides for liquidated damages. As the policy guideline provides, 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 fixed term by the tenant. If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum unless the sum is found to be a penalty. I find the amount payable under the clause to be a reasonable

pre-estimate and is not a penalty. Therefore, I grant the landlord's request to recover liquidated damages of \$350.00 from the tenant.

In light of the above, I authorize the landlord to withhold \$1,120.84 from the tenants' deposits for loss of rent and liquidated damages, as requested.

Since the landlord has already refunded the balance of the deposits to the tenant and the landlord withdrew the request to recover the filling fee, no Monetary Order is provided to either party with this decision.

### Conclusion

The landlord has been authorized to withhold \$1,120.84 from the tenants' deposits in satisfaction of liquidated damages and loss of rent, as requested.

The landlord has already refunded the balance of the deposits to the tenant and no Monetary Order is issued with this decision.

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: June 09, 2017

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Residential Tenancy Branch