



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ROVAX PROPERTY SERVICES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes                      MNSD, MNDC, FF, O

### Introduction

This hearing was convened by way of conference call in response to the Landlords' Application for Dispute Resolution (the "Application") filed on December 15, 2016 requesting to keep the Tenants' security deposit for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement. The Landlords also filed to recover the filing fee from the Tenants and for "Other" undisclosed issues.

An agent for the Landlords, the property manager, and the male Tenant appeared for the hearing and provided affirmed testimony. The Tenant confirmed receipt of the Landlords' Application and their binder of evidence. The Tenant also confirmed that they had not provided any evidence prior to the hearing. The hearing process was explained to the parties and no questions on how the proceeding would be conducted were asked by the parties.

### Issue(s) to be Decided

- Are the Landlords entitled liquidated damages?
- Are the Landlords entitled to keep the Tenants' security deposit in full satisfaction of their monetary claim?

### Background and Evidence

The parties confirmed that this tenancy started on March 1, 2016 for a fixed term of one year which was set to expire on February 28, 2017; after this time the tenancy was intended to continue on a month to month basis. Rent under the signed tenancy agreement was \$1,680.00 payable by the Tenants on the first day of each month. The Tenants paid the Landlords a security deposit of \$840.00 on February 1, 2016 which the Landlords still retain in trust. The parties confirmed that the tenancy ended when the Tenants provided the Landlords with written notice on September 16, 2016 to end the fixed term tenancy prematurely on November 30, 2016. The Landlords received the Tenants' forwarding address by email on December 7, 2016. The Landlords were able to re-rent the rental unit for December 1, 2016.

The Landlords' agent referred to the signed tenancy agreement which details a liquidated damages clause in section 4 as follows:

*"If the tenant ends the fixed term tenancy before the end of the original term as set out in (B) above [the fixed term end date of February 28, 2017], the landlord may, at the landlords option, treat this Tenancy Agreement as being an end. In such event, the sum of \$1680 shall be paid by the tenant to the landlords as liquidated damages, and not as a penalty, to cover the administration costs of rerenting the said premises. The Landlord and tenant acknowledge and agree that the payment of the liquidated damages shall not preclude the landlord from exercising any further right of pursuing another remedy available in law or in equity, including, but not limited to, damages to the premises and damages as a result of rental income due to the tenant's breach of the terms of this agreement"*

[Reproduced as written]

The Landlords' agent explained that the Tenants had broken the fixed term tenancy and therefore were liable to pay \$1,680.00 pursuant to the liquidated damages clause they had signed. However, the Landlords only claim half of this cost of \$840.00 in an effort to be reasonable with the Tenants. The Landlords' agent stated that they attempted to obtain this amount from the Tenants but they refused on the basis that the liquidated damages clause in the tenancy agreement was a penalty.

The Landlord provided into evidence a breakdown of the expenses related to the re-renting of the property for December 2016 which includes the property management fees charged by the Landlord's agent and credit checks. The Landlords' agent testified that the estimate of the amount detailed in the liquidated damages clause include advertising costs, fielding enquiries for re-rental, setting up and conducting viewings, reviewing and qualifying potentials tenants, and completion of the tenancy agreement and condition inspection reports. The Landlord stated that these costs amount to more than one month's rent.

The Tenant disputed the Landlords' claim stating that the Landlord had not suffered any rental loss or damages to the rental unit because they were able to re-rent the unit for December 1, 2016. While the Tenant understood that they had ended the fixed term prematurely and understood the liquidated damages clause they had entered into in the tenancy agreement, the Tenant submitted that this was a way for the Landlords to get more money out of them than what they had incurred or lost. The Tenant testified that he had done everything to mitigate the loss and that the fees and losses the Landlords had actually incurred for re-renting the property were much less than \$840.00. The Tenant stated that the costs laid out by the Landlord were unreasonable and excessive.

### Analysis

I first turn my mind to the timing of the Landlords' Application. The parties confirmed that the Landlords received the Tenants' forwarding address on December 7, 2016. Therefore, as the

Landlords filed the Application on December 15, 2016, I find it was made within the 15 day time limit provided for by Section 38(1) of the Act.

In relation to the Landlords' claim for liquidated damages, I turn to Section 44(1) (b) of the Act which prohibits a landlord or tenant from ending a fixed term tenancy. In addition, a fixed term tenancy cannot be ended with a written notice that seeks to end the tenancy earlier than the end date of the fixed term period. Therefore, I find that the Tenants breached the fixed term tenancy and ended the tenancy contrary to the Act and the tenancy agreement.

I next turn to the liquidated damages clause the Tenants had signed and entered into on the tenancy agreement. 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 considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into. There are a number of tests to determine if a clause is a penalty clause or a liquidated damages clause. These include:

- A sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach.
- If an agreement is to pay money and a failure to pay requires that a greater amount be paid, the greater amount is a penalty.
- If a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.

If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent. Generally clauses of this nature will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum.

In this case, I find the Tenants signed and fully understood the tenancy agreement and that they were liable to pay liquidated damages for ending the tenancy prematurely. I find the liquidated damages clause was clearly and carefully laid out in the tenancy agreement and detailed the consequences of breaking the fixed term tenancy agreement to the parties.

While the Landlords were able to mitigate any loss of rent in this tenancy, I accept the Landlords still incurred costs for re-renting the rental unit. I find the amount of one month's rent stipulated to cover the administration costs that the Landlords would have likely incurred at the time the tenancy agreement was entered into is reasonable and not extravagant or exorbitant in relation to the rent payable in this tenancy. I find the amount the Landlords seek to claim from the Tenants is now half of what they would have been entitled to under the clause of the tenancy agreement. This further convinces me that amount being sought is not oppressive or excessive

taking into account that the Tenants were the ones that breached the agreement and this is where the claim emanates from.

While the Landlords' allocation of the costs to the determination of liquidated damages amount appears to be arbitrary, there is insufficient evidence before me that the costs themselves are not genuine costs. In addition, I find the Tenant failed to provide sufficient evidence to show that the costs laid out by the Landlords were not a genuine pre-estimate of their losses or that they were a penalty. Although it is true that the Landlord did not suffer any rental income loss, I find this is irrelevant and not contingent on the agreement to pay the liquidated damages upon ending the tenancy early. Therefore, I grant the Landlord's claim for \$840.00.

### Conclusion

The Tenants breached the Act and the tenancy agreement by ending the fixed term tenancy early. Therefore, the Landlords are entitled to liquidated damages in the amount claimed of \$840.00. As the Landlords have been successful in their claim, pursuant to Section 72(1) of the Act, I also award them their filing fee of \$100.00. Therefore, the total amount awarded to the Landlords is \$940.00.

The Landlords may achieve this relief by keeping the Tenants' security deposit of \$840.00 pursuant to Section 72(2) (b) of the Act and are issued with a Monetary Order of \$100.00 for recovery of their filing fee.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: June 13, 2017

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Residential Tenancy Branch