



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Columbia Property Management Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MND, MNDC, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for damages to the unit - Section 67
3. A Monetary Order for compensation - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

Tenant NS did not attend the hearing. I accept the Landlord’s evidence that this Tenant was served with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail in accordance with Section 89 of the Act and that the Tenant NS signed for the receipt of the mail. The Landlord and Tenant DS were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

Agreed facts: The tenancy started on September 1, 2016 on a fixed term to end on August 31, 2017. Rent of \$800.00 was payable on the first day of each month. At the

outset of the tenancy the Landlord collected \$400.00 as a pet deposit and \$400.00 as security deposit. On April 1, 2017 the Tenant gave notice to end tenancy for April 30, 2017 and moved out of the unit on April 28, 2017. The Parties mutually conducted both a move-in and move-out condition inspection with reports for each inspection completed and copied to the Tenant. The Tenant provided its forwarding address at move-out. The Tenant owes **\$30.10** and **\$18.80** for outstanding gas bill, **\$40.40** for an outstanding hydro bill, and **\$89.25** for the cost of carpet cleaning.

The Landlord states that the tenancy agreement includes a break lease fee of \$300.00 that the Tenant agreed to pay if the Tenant ended the tenancy before the fixed term. I note that this section refers to the fee as liquidated damages. The Landlord claims \$300.00. The Tenant states that the Landlord informed the Tenant that if the Tenant had to relocate for employment that the Tenant could break the lease. The Landlord confirms that the tenancy agreement provides that the Tenant may break the lease in this instance but that a fee of \$300.00 is still required and her relocation for work was only substantiated by an email from the Tenant informing of the relocation and that no confirmation was provided from the employer. The Tenant states that the Landlord did not inform her of what she need to substantiated her move.

The Landlord states that the unit was advertised for \$800.00 and was filled on June 1, 2017. The Landlord claims lost rental income for May 2017 of \$800.00.

### Analysis

“Liquidated damages” is a term for a legal principle where, by agreement, one party accepts a sum of money for damages arising from the other party’s breach and no other monies are then payable as damages for that breach. This amount limits or determines in advance the damages flowing from the early end of the tenancy. A party may not be entitled to two sums of money for the same breach. As lost rental income is a damage that flows from an early end of tenancy, as the damages arising from an early end of tenancy have been determined by agreement in advance at \$300.00 as liquidated

damages, and as the Landlord has made a conflicting claim for both liquidated damages and lost rental income, I resolve the conflict in favor of the Tenant and find that the Landlord has substantiated **\$300.00** for liquidated damages. I dismiss the Landlord's claim for lost rental income. I note that although the Tenant argues that she was allowed to end the tenancy due to work relocation, the agreement would still have required the payment of \$300.00 and I note that the Landlord did not make this claim.

As the Landlord's application has had merit I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$578.55**. Deducting this entitlement from the combined security and pet deposit plus zero interest of **\$800.00** leaves **\$221.45** owed to the Tenant. I order the Landlord to return this amount to the Tenant forthwith.

#### Conclusion

I Order the Landlord to retain \$578.55.00 from the security deposit plus interest of \$800.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$221.45**. If necessary, 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: August 30, 2017

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Residential Tenancy Branch