



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NAROD PROPERTIES CORP.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Code MNR, MNDC MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, for money owed and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Preliminary matter

At the outset of the hearing three tenants attended; however, AR is the only named tenant in the landlord's application. JB stated that they are a tenant under the tenancy agreement and should be added to the style of cause. The landlord's agent consented to the amendment only if JB provided a forwarding address. JB provided that address which I have noted on the covering page of the decision. Therefore, I have amended the style of cause to add JB as a tenant.

LJ stated they are a tenant under the tenancy agreement and do not want to be added to the style of cause. As LJ was not listed as a respondent, I find the LJ is a witness. LJ was excused from the hearing and the tenants subject to the hearing could contact LJ if they needed LJ to provide additional evidence. It was confirmed in the hearing by

the named tenants that LJ would not provide any additional evidence and there was no need to have them rejoin the hearing.

### Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to monetary compensation for money owed?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The parties entered into a fixed term tenancy, which began on September 1, 2016 and was to expire on August 31, 2017. Rent in the amount of \$2,200.00 was payable on the first of each month. The tenants paid a security deposit of \$1,100.00.

The landlord claims as follows:

a.	Unpaid rent for June 1 to 15	\$1,100.00
b.	Liquidated damages	\$1,100.00
c.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$2,300.00</b>

### Unpaid rent for June 1 to 15

The landlord's agent testified that the tenants breached the fixed term agreement by ending the tenancy earlier than the Act allows. The agent stated after discussion the tenants officially ended the tenancy on June 15, 2017, as a new renter was found to take over the balance of their lease. The landlord seeks to recover prorated rent for June 1 to June 15, 2017. The landlord seeks to recover the amount of \$1,100.00. Filed in evidence is an email dated May 10, 2017.

The tenants testified that they agreed that they are responsible for rent from June 1, 2017.

### Liquidated damages

The landlord's agent testified that because of the tenants breaching the fixed term tenancy they are entitled to recover the liquidated damages as specified in the tenancy

agreement. The agent stated this was fully explained to the tenants at the start of the tenancy.

The tenants testified that they were not informed when they were ending the tenancy early that they would have to pay the liquidated damages on top of paying half of June 2017. The tenants stated had they know they would have not ended the tenancy when they did.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

### Unpaid rent for June 1 to 15

The tenants agreed that they were responsible for rent from June 1 to June 15, 2017. Therefore, I find the landlord is entitled to recover the amount of **\$1,100.00**.

### Liquidated damages

The tenancy agreement has a liquidated damages clause that is collectable, if the tenancy is ended earlier than the date specified in the tenancy agreement. The parties agreed in the agreement that this was an estimated cost of re-renting the rental unit.  
Not a penalty

While I accept the tenants may not have fully understood the meaning of liquidated damages, it was their responsible to fully understand the contract before they entered into it, such as seeking legal advice. A contract is legal and binding on the parties.

Therefore, I find the landlord is entitled to recover liquidated damages as specified in the tenancy agreement in the amount of **\$1,100.00**.

I find that the landlord has established a total monetary claim of **\$2,300.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$1,100.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$1,200.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenant.

### Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: November 10, 2017

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Residential Tenancy Branch