



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Tenant: MNSD, FF  
Landlord: MNSD, MNDC, MND, FF

### **Introduction**

This hearing was convened in response to cross-applications by the parties. The landlord filed on August 14, 2017 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. A monetary Order for damage / loss – Section 67
2. An Order to retain the security deposit – Section 38
3. An Order to recover the filing fee for this application - Section 72.

The tenant filed on August 22, 2017 for Orders as follows;

1. An Order for return of security deposit - Section 38
2. An Order to recover the filing fee for this application - Section 72.

Both parties attended the hearing and were given an opportunity to discuss and settle their dispute, to no avail. The landlord acknowledged receiving the document evidence of the tenant; and; that they did not submit any document evidence of their own to this matter, save a copy of a letter to the tenant requesting a rescheduling of their application / the hearing, to which the tenant did not agree. The parties were given opportunity to present relevant testimony.

### *Preliminary matters*

The landlord sought for the hearing to be rescheduled because they claimed experiencing a lengthy recovery from “*R. Hand Reconstruction Surgery*” in October 2017, and, their partner suffering, “a second stroke in January” and testifying that their

partner had suffered a further third and more severe stroke recently and hospitalized, all of which they claim has prevented them from preparing for this hearing. The tenant claimed the landlord has not been truthful in the past and they doubted the landlord's veracity and therefore did not agree to reschedule this hearing. I contemplated the landlord's request and testimony as well as the tenant's testimony. I considered the landlord had in the least 2 months to prepare their evidence after filing their claim in August 2017 for \$2233.00 before the claimed surgery. In the absence of any other supporting evidence available to the landlord, such as a note from a physician, or other written testimonial in support of all their medical claims, I denied the landlord's request to reschedule the hearing. Therefore, the hearing advanced on the merits of the tenant's application and relevant portions of the landlord's application, which due in part to the tenant's corroborating evidence, amounted to support solely for the landlord's claim for *liquidated damages*.

In the absence of any supporting document evidence from the landlord for all of their other monetary claims I apprised the parties that the balance of the landlord's monetary claims was dismissed with leave to reapply. On reflection, as the landlord has not submitted evidence in support of their claims, I find that the landlord's remaining monetary claims, other than their claim for liquidated damages, are preliminarily **dismissed**, *without leave to reapply*.

### **Issue(s) to be Decided**

Is the landlord entitled to the monetary amount claimed for *liquidated damages*?  
Is the tenant entitled to the monetary amount claimed?

### **Background and Evidence**

The tenancy has ended. The undisputed evidence in this matter is as follows. The tenancy began January 01, 2017 as a written tenancy agreement for a fixed term ending December 31, 2017, however ended earlier than legally contracted on July 31, 2017 by way of the tenant's notice ending the tenancy. The landlord testified that in

spite of the tenant ending the tenancy earlier than contracted they did not suffer a loss of revenue. The hearing had benefit of the written Tenancy Agreement indicating the parties' agreement to *liquidated damages* of \$600.00 in respect to an early end of the tenancy, in this case, by the tenant. The landlord seeks the agreed *liquidated damages* amount.

At the outset of the tenancy the landlord collected a security deposit in the amount of \$645.00 which the landlord retains in trust. The payable rent was in the amount of \$1290.00 due in advance on the first day of each month. The parties agree there was a *move in* condition inspection at the outset of the tenancy and there was a *move out* condition inspection conducted between the tenant and the landlord. The hearing did not have benefit of the requisite Condition Inspection Report (CIR) however the parties confirmed they did not agree as to the administration of the security deposit. The tenancy ended July 31, 2015. The parties agreed the tenant provided the landlord with a written forwarding address on July 30, 2017. The landlord failed to retain the security within 15 days of the end of the tenancy. The tenant seeks return of the security deposit.

### **Analysis**

*A copy of the Residential Tenancy Act, Regulations and other publications are available at [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).*

It must be known that the tenant's security deposit is always the tenant's money, however is held in trust by the landlord during the tenancy to be administered at the end of the tenancy in accordance with the Act. If there is no legal reason for withholding the security deposit the landlord must return it to the tenant or it will be automatically returned to them through the dispute resolution process. On preponderance of the evidence before me, on balance of probabilities, I find as follows:

In order to address the landlord's claim for liquidated damages, I must rely on the terms of the provision in the tenancy agreement. The agreement very clearly states that liquidated damages are payable where the tenant, "*provides the landlord with notice, . .*

*and end the tenancy by vacating, and does vacate before the end of any fixed term, . . . the tenant will pay to the landlord the sum of \$600.00 as liquidated damages, and not as a penalty, for all costs associated with re-renting the rental unit".* The original fixed term was to expire on December 31, 2017 and I find the tenant breached that term as set out in the agreement.

It must further be known that a Tenancy Agreement is, effectively, a contract for a tenancy. I find the tenant signed the contractual Tenancy Agreement including confirming their consent to the landlord's clause of the pre-estimate of all costs for re-renting the unit in the event the tenant determined to end the tenancy earlier than the terms afforded by this contract.

Residential Tenancy Policy Guideline #4 speaks to the subject of Liquidated Damages. The guideline aptly confirms that 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. It further states that in order for a landlord's claim of *Liquidated Damages* to be enforceable, their claim in the Tenancy Agreement must be a *genuine pre-estimate of loss at the time the contract is entered into*, and not the landlord's actual costs at the end of the tenancy. *Liquidated damages* clause, in order to not be a penalty, must solely represent or state an amount which the parties agreed, at the outset of the tenancy, as a genuine pre-estimate of charges or costs incurred by the landlord to re-rent the unit, in the event of a breach of the fixed term nature of the tenancy agreement. If the amount for liquidated damages is extravagant in comparison to the greatest loss that would be incurred by the landlord to re-rent the unit, the liquidated damages clause may be interpreted as a penalty or unconscionable, and therefore unenforceable in legal proceedings. In this matter, I find that the amount agreed to by the parties for liquidated damages at the outset of the tenancy is not an extravagant pre-estimate representation therefore I grant the landlord's claim in the amount of **\$600.00**. As the landlord was in part successful in their application they are entitled to recover the filing fee. As the resulting award exceeds the tenant's security deposit the tenant's application is moot and therefore dismissed. Calculation for

Monetary Order is as follows. The tenant's security deposit held in trust by the landlord will be offset from the award made herein.

landlord's award for liquidated damages	\$600.00
filing fee - landlord	\$100.00
<i>Minus tenant's security deposit - in trust</i>	<i>- \$645.00</i>
<b>Monetary Order to landlord</b>	<b>\$55.00</b>

### **Conclusion**

The landlord's application in part has been granted and the balance dismissed, *without leave to reapply*. The tenant's application has been dismissed.

**I Order** the landlord may retain the tenant's security deposit in partial satisfaction of their claim and **I grant** the landlord a Monetary Order under Section 67 of the Act for the balance in the amount of **\$55.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**This Decision is final and binding.**

*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: February 27, 2018

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Residential Tenancy Branch