



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REMAX MANAGEMENT SOLUTIONS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            MSND MNDC FF

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The landlord applied for a monetary order for authorization to retain all or part of the tenant's security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the cost of the filing fee.

An agent for the landlord ("agent") and the tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

Neither party raised any concerns regarding the service of documentary evidence.

### Preliminary and Procedural Matter

The parties provided their email addresses at the outset of the hearing which were confirmed by the undersigned arbitrator. The parties confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

Copies of two relevant tenancy agreements were submitted in evidence. The first tenancy agreement was a fixed term tenancy which began on August 1, 2016 and ended on July 31,

2017. The second tenancy agreement was also a fixed term tenancy which began on August 1, 2017 and was scheduled to end on July 31, 2018.

There is no dispute that the tenant paid a security deposit at the start of the first tenancy in the amount of \$675.00, which the landlord continues to hold and which has accrued no interest to date.

The landlord's has claimed \$625.00 for the cost of liquidated damages which is listed in clause 5 of the second tenancy agreement. The tenant submitted in evidence that she served a one month notice to end tenancy to the landlord dated July 30, 2017 which indicates that she will be vacating the rental unit on August 31, 2017. The agent stated that the tenant signed the second fixed term tenancy agreement. The agent stated that based on the tenant's request for an extra month in the rental unit, that he would confirm with the owner if she was agreeable to that request and followed up with the tenant to indicate that the owner would not agree to an extra month or a month to month tenancy and that a fixed term was the only agreement the landlord was willing to enter into.

The tenant ultimately signed the one year fixed term tenancy and then served her one month notice that she would be vacating either on the same day as signing the agreement or close to it. The agent stated that this confused him as the tenant signed a fixed term tenancy and that the tenant was not permitted to end the tenancy by giving a one month notice as that was a breach of the fixed term tenancy.

The tenant confirmed during the hearing that she was aware that clause five listed an amount of \$625.00 for liquidated damages. The tenant vacated the rental unit on or about August 31, 2018. The tenant claims that the agent made a verbal agreement at the start of the first tenancy agreement that the tenant could end a fixed term by giving one month notice which the agent denied.

### Analysis

Based on the testimony of the parties provided during the hearing, the documentary evidence and on the balance of probabilities, I find the following.

#### Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;

2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

**Item 1** – Section 45(2) of the *Act* applies and states in part:

**Tenant's notice**

- 45** (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice,
  - (b) **is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and**
  - (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

[Reproduced as written]

Based on the above and the fact that the tenant provided written notice to end the fixed term tenancy after signing a new one year fixed term tenancy effective August 1, 2017 and scheduled to end on July 31, 2018 I find the tenant breached section 45(2) of the *Act*. As a result, I find the tenant owes the landlord **\$625.00** for liquidated damages and which was clearly agreed by the parties in clause five of the tenancy agreement. Therefore, I find the landlord has met the burden of proof. I afford no weight to the disputed verbal agreement to end the tenancy early as claimed by the tenant as the agent denied that a verbal agreement existed and a written tenancy agreement overrides a disputed verbal agreement as the documentary evidence before me clearly supports that the tenant was aware of the cost of liquidated damages and signed the second tenancy agreement regardless.

As the landlord's application was successful, I grant the landlord the recovery of the cost of the filing fee pursuant to section 72 of the *Act* in the amount of **\$100.00**.

I find that the landlord has established a total monetary claim in the amount of **\$725.00** pursuant to section 67 of the *Act* comprised of \$ 625.00 for item 1 plus \$100.00 for the recovery of the cost of the filing fee.

I authorize the landlord to retain the tenant's full security deposit of \$675.00 which has accrued \$0.00 in interest, in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlord in the amount of **\$50.00**.

### Conclusion

The landlord's claim is fully successful.

The landlord has established a total monetary claim in the amount of \$725.00 and has been authorized to retain the tenant's full security of \$675.00. The landlord is granted a monetary order in the amount of for the balance owing by the tenant to the landlord in the amount of \$50.00 pursuant to section 67 of the *Act*. Should the tenant failed to pay the landlord that amount, the monetary order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 12, 2018

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Residential Tenancy Branch