



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PTR Development Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, MNSD, MNR, FF

### Introduction

This hearing was convened in response to an application and an amendment 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 compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenants did not attend the hearing. I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail on October 12, 2017 in accordance with Section 89 of the Act. I also accept the Landlord’s evidence that the Tenant was served with the amended application by registered mail on April 17, 2018.

Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenant is deemed to have received the Materials on October 17, 2017 and the amended application on April 22, 2018 whether the Tenant collected the mail or not. The Landlords were given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to the momentary amounts claimed?

### Background and Evidence

The tenancy started on July 1, 2017 for a fixed term to end June 30, 2018. The Parties mutually conducted a move-in inspection with a completed inspection report copied to the Tenant. Rent of \$1,510.00 and parking of \$150.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected **\$755.00** as a security deposit and \$150.00 as a fob deposit for two fobs. The Tenant returned one fob during the tenancy and was returned \$75.00.

On September 27, 2017 the Tenant gave notice to end the tenancy for October 31, 2017. The Tenant moved out of the unit on October 4, 2017 and put a stop payment on the October 2017 rent cheque. The Landlord claims unpaid rent and unpaid parking fees of \$1,660.00 for October 2017.

The Tenant returned the remaining fob at move-out and for unknown reasons the deposit of **\$75.00** was not returned to the Tenant. On October 4, 2017 the Parties mutually conducted a move-out inspection and the Tenant provided its forwarding address in writing on the move-out inspection report.

On October 11, 2017 the Landlord advertised the unit at the same rental rate and as no tenants could be found the Landlord lowered the advertised rental rate to \$1,400.00 and obtained a new tenant at this rate for a tenancy start date of December 1, 2017 on a fixed term to end November 30, 2018. The Landlord claims lost rental income of \$1,520.00 for November 2017 and lost rental income of \$770.00 for the period December 2017 to June 2018 inclusive. This amount is based on a monthly loss to the end of the Tenant's fixed term of \$110.00.

The tenancy agreement includes a provision for liquidated damages as follows:

"If the Tenant breaches a material term of this Agreement that causes the Landlord to end the tenancy before the end of any fixed term as set out in clause 4 above, or if the Tenant provides the Landlord with notice, whether written, oral, or by conduct, of an

intention to breach this Agreement 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 \$700.00 as liquidated damages and not as a penalty. Liquidated damages are an agreed pre-estimate of the Landlord's costs of re-letting the rental unit and must be paid in addition to any other amounts owed by the tenant, such as unpaid rent or for damage to the rental unit or residential property." The Landlord claims liquidated damages of \$755.00.

The tenancy agreement includes a provision for a late rent payment fee of \$25.00. The Landlord claim this fee for October 2017 rent.

The Landlord states that the Tenant left the unit unclean and claims the cleaning costs of \$47.25 with the receipt provided. The Landlord states that the blinds were clean at the outset of the tenancy and the Tenant left them soiled with dust at the end of the tenancy. The Landlord obtained a cleaning service to remove and clean the blinds at a rate that was more economical than the minimal cleaning rates offered by companies to clean the blinds without removing them. The Landlord states that cleaners who come into the unit charge a minimum of 3 to 4 hours cleaning costs regardless of the time required for cleaning at average rates of \$35.00 per hour. The Landlord claims \$94.50 as the costs to clean the blinds with the receipt provided.

### Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. Based on the undisputed evidence of monthly rent and parking payable, occupancy of the unit by the Tenant on and after the first day of October 2017 and the

failure of the Tenant to pay the rent and parking for this month as it was due, I find that the Landlord is entitled to unpaid rent and parking for October 2017 of **\$1,660.00**.

Based on the undisputed evidence of a required payment of a late rent fee I find that the Landlord has also substantiated the fee of **\$25.00** for October 2017.

“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. In this instance although the liquidated damages clause uses the costs of re-renting to describe the amount being quantified, it does not make a difference to the outcome as the amount becomes payable upon acts that result in the early end of the tenancy: either the Tenant ends the tenancy early or by another breach causes the Landlord to end the tenancy early. This amount limits or determines in advance the damages flowing from the breach in ending the tenancy before the end date. The clause further provides that such monies are due to the landlord in addition to any other amounts owed by the tenant, such as unpaid rent or for damage to the rental unit or residential property. I note that these additional amounts would flow from different breaches of the tenancy agreement such not paying rent while occupying the unit or not leaving the unit clean and undamaged at the end of a tenancy. These amounts are not damages that would flow from an early end of the tenancy and are therefore not limited or predetermined by the liquidated damage amount.

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 \$770.00, 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 **\$770.00** for liquidated damages. I dismiss the Landlord’s claim for rental monies for the period November 2017 to June 2018 inclusive.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Based on the undisputed evidence of an unclean unit and blinds, considering both the reasonable cleaning costs claimed and the evidence of mitigation, and given the invoices provided to support that costs were incurred, I find that the Landlord has substantiated an entitlement to **\$47.25** and **\$94.50** for the cleaning of the unit and the blinds.

As the Landlord's claims have met with substantial success I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,696.75**. Deducting the security deposit plus zero interest of **\$755.00** and the fob deposit of **\$75.00** from this entitlement leaves **\$1,866.75** owed by the Tenant to the Landlord.

#### Conclusion

I Order the Landlord to retain the security deposit plus interest of \$755.00 and the fob deposit of \$75.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$1,866.75**. 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: May 11, 2018

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Residential Tenancy Branch