



# Dispute Resolution Services

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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      MNR MND MNDC MNSD FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for: a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended this hearing (2 tenants and 1 representative for the landlord). The tenants confirmed receipt of the landlord's application for dispute resolution as well as the amendment filed on March 13. Both parties were given an opportunity to make submissions, refer to evidentiary submissions and to provide testimony.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order against the tenants for: unpaid rent, rental loss and/or liquidated damages as a result of the tenants vacating before the end of their fixed term tenancy? Is the landlord entitled to retain the tenants' security and pet damage deposits towards any monetary award? Is the landlord entitled to recover the filing fee for this application?

### Background and Evidence

While I have considered all of the testimony and all of the documentary evidence submitted by the parties, I have limited my summary of the background and evidence in this decision to the relevant arguments and submissions of each party. Therefore, the

principal aspects of the landlord's claim (as indicated in their application form) and the tenants' response are set out below.

This tenancy began on June 1, 2017 as a one year fixed term tenancy. The tenancy agreement was submitted by the landlord as evidence for this hearing. The monthly rental amount of \$1925.00 was payable on the 1<sup>st</sup> of each month. The tenants vacated the rental unit on August 30, 2017. The landlord applied to retain the tenants' security (\$962.50) and pet damage (\$962.50) deposits in the amount of \$1925.00 towards a total monetary amount of \$8608.78.

The landlord testified that, two months after the tenants moved into the rental unit, the tenants provided notice that, as a result of an employment opportunity, they would vacate the rental unit on August 30, 2017 – before the end of the fixed term tenancy. The landlord testified that she made significant efforts to re-rent the tenants' unit as soon as possible and thereby reduce any losses in rental income. She provided documentary evidence showing the advertisements placed in an effort to re-rent the unit; office documentation regarding prospective tenant communication and background checks; as well as the new tenancy agreement to re-rent the unit dated November 24, 2017. The landlord submits that the tenants should be required to pay September, October and November 2017 rent as, despite the landlord's efforts, the unit went unrented for those months.

The landlord testified that, to re-rent the unit were (forced) to reduce the rental amount to entice a suitable tenant. The landlord testified that the rent amounts in the summer (when the tenants rented the unit) are higher than the rent amounts in the fall. She submitted advertisements to reflect the difference in rent amounts. The landlord testified that the time of year that the tenants chose to vacate is notoriously slower than the summer. The landlord testified that, after advertising for approximately 2 months, the landlords reduced the rental amount to \$1690.00. The landlord testified that the landlord slowly and incrementally reduced the rent but that it was not until the amount reached \$1690.00 that they were able to secure a viable tenant. The landlord submitted that the tenants should be responsible for the difference between their monthly rental amount and the new tenants' rental amount (\$235.00) for the duration of the tenants' fixed term (December 2017 to May 31, 2018).

The landlord submitted a copy of the residential tenancy agreement including a clause that states,

*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... 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 \$962.50 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 also submitted a copy of the notice to end tenancy form created by the landlord and completed by the tenants that states,

*I/we further understand, should the landlord be unable to re-rent the premises to a satisfactory tenant on the date requested [as the end of tenancy: August 31, 2017], I/we will be held responsible for rent up [to May 31, 2018 or the date the suite is rented, whichever is the earliest date.*

The landlord submitted that the agreement and end of tenancy notice shows that the tenants were aware of the possible consequences of ending a fixed term before its expiry date.

The landlord submitted a condition inspection report for move-in and move-out of the rental unit. The final report after move-out is signed by the tenants and indicates that they agree to have the landlord retain their security and pet damage deposit towards the cost of cleaning the unit and cleaning the blinds as well as to recover the full rent for the month of September 2017. The condition inspection report provided the following breakdown,

Unpaid Rent (September 2017)	\$1925.00
Liquidated Damages	962.50
Window cover cleaning	175.00
Suite cleaning: 2 hours	90.00
Less Security (and Pet Damage) Deposit	-1925.00
Less Key Deposit	-225.00
<b>Total Amount listed on report as owed by tenants:</b>	<b>\$1002.50</b>

The tenants acknowledged that, despite their short tenancy, they were obliged by their residential tenancy agreement to clean the blinds and the rental unit. The tenants acknowledged that, as they were ending their fixed term lease early, they were

responsible to pay the liquidated damages fee, as well as it was also included in the residential tenancy agreement. However, the tenants submitted that they should not be responsible for rental loss that the landlord could have avoided. The condition inspection report included a line where the tenants could agree to the final amounts owed to the landlord. However, they crossed their signature out on the condition inspection report.

The tenants submitted that they provided more than one months' notice and that should have been sufficient time for the landlord to re-rent the unit in that period. The tenants provided undisputed testimony that they assisted in finding someone to re-rent the unit. Tenant J testified that the tenants advertised on three different sites for residential rentals and that the tenants held approximately 10 showings at the apartment to prospective tenants. Tenant J testified that, as a result of their efforts, three applications to rent were submitted to the landlord before they vacated the rental unit but none were approved.

The tenants argued that the corporate landlord has a large amount of property (at least 3 buildings and over 400 rental units as well as a new property at the time they vacated the rental unit). Tenant J claimed that there is no October 2017 advertisements submitted by the landlord, suggesting that they were busy attending to other matters that month. The tenant also submitted that it was not necessary for the landlord to reduce the rental amount, as the vacancy rate in their city was very near zero in the month that they vacated the rental unit. The tenants argued that the landlord did not make sufficient efforts to rent their specific unit as they could potentially recover rental loss from the tenants and instead the landlord focussed on renting their vacant rental units. Tenant G testified that the tenants also used social media to find replacement tenants. He testified that he argued that the landlord's refusal of the prospective tenants' applications brought by the tenants were unreasonable.

In their application, the landlord sought a monetary amount of \$8608.78. I have included the key deposit of \$225.00 and will assess the landlord's claim as follows,

<b>Item</b>	<b>Amount</b>
Rental Loss (3 months' rent x \$1925.00)	\$5775.00
Rental Loss - difference for remainder of fixed term from Dec 2017 (7 months x \$325.00)	1645.00
Liquidated Damages	962.50
Window cover (blinds) cleaning	155.40
Suite cleaning	70.88

Less Security & Pet damage & key Deposit (\$225.00)	-2150.00
<b>Total Monetary Order</b>	<b>\$6458.78</b>

The landlord also applied to recover the \$100.00 filing fee for this application.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss (in this case, the landlord) bears the burden of proof.

The landlord must prove the existence of the damage/loss. I find that the landlord has proven damage and loss and that the damage/loss stemmed directly from a violation of the agreement or a contravention of the *Act* by the tenants. In this case, the landlord submitted a condition inspection report that accurately reflects her testimony regarding the blinds and the cleaning of the rental unit. Residential Tenancy Regulation No. 21 provided that the condition inspection report is the best evidence available of the condition of the unit unless proven otherwise. The amounts for cleaning and blinds were reduced prior to the hearing (from estimates to invoices submitted) and ultimately not disputed by the tenants. For these reasons, the landlord is entitled to recover \$70.88 for suite cleaning and \$155.40 for blind cleaning.

The landlord provided a copy of the residential tenancy agreement signed by the tenants. The agreement shows the rental amount of \$1925.00 per month for a fixed term until May 2018. The subsequent rental agreement with a new tenant was signed November 24, 2017 with a rental amount of \$1690.00 per month. I accept the landlord's testimony, supported by the agreements submitted and the landlord's advertisements and other documentary evidence showing the landlord's attempts to rent the unit at the full rental amount. I find that the landlord made sufficient efforts to re-rent the unit and for the same rental amount. I find that the landlord is entitled to \$5775.00 for rental loss from September, October and November 2017 as a result of the tenants' early end to this fixed term tenancy, contrary to the residential tenancy agreement between the parties.

The residential tenancy agreement is clear that this tenancy was intended to continue for 1 year, until May 2018. Residential Tenancy Policy Guideline No. 30 provides direction on the definition and terms of a fixed term tenancy as used in section 44 of the Act:

A fixed term tenancy is a tenancy where the landlord and tenant have agreed that the tenancy agreement will begin on a specified date and continue until a predetermined expiry date...

A fixed term tenancy creates security for both parties to the agreement. Based on all of the evidence submitted at this hearing, I find that the tenants breached the conditions of the residential tenancy agreement by ending the tenancy before the pre-determined expiry date. I accept that the landlord made extensive efforts to re-rent the tenants' unit for the same rental amount. I accept that the landlord has provided sufficient evidence to show that she had to, after 2 unsuccessful months of advertising, lower the rental amount from \$1925.00 to \$1690.00 to attract a viable tenant. I find that the landlord has proved her loss and that the loss is a result of the actions of the tenants in ending the tenancy before the end of the fixed term. As the landlord made sufficient efforts to mitigate her loss and suffered a loss of \$235.00 per month for the remainder of the tenancy (December 2017 to May 2018), I find that the landlord is entitled to the \$1410.00 in rental loss (\$235.00 x 6).

Policy Guideline No. 4 provides guidance with respect to claims by the landlord for liquidated damages,

*A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. In considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into.*

The Policy Guideline provides a variety of considerations in determining if a liquidated damages clause is a penalty. Among the considerations is, as stated in the guideline, "[if] an agreement is to pay money and a failure to pay requires that a greater amount be paid, the greater amount is a penalty." These tenants provided a vacate notice 30 days prior to their move out and/but prior to the end of his agreed-to fixed term tenancy. The tenants made the choice to vacate the unit prior to the end of the fixed term and landlord showed (in residential tenancy agreement, notice to end tenancy and condition

inspection report) that the tenants were aware of the consequences for doing so. In accordance with their tenancy agreement and given that the tenants ended this fixed term tenancy early, I find that the landlord is entitled to the \$962.50 liquidated damages fee for pre-estimated expenses including but not limited to the administrative costs of re-renting the unit, the advertising and other related costs.

Residential Tenancy Policy Guideline No. 3 outlines the parameters of this type of damage claim,

*The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy.*

The tenants attempted to give as much notice that they would end the tenancy as possible. The tenants provided a reasonable explanation for ending the tenancy. However, the fixed term tenancy is intended to create stability and certainty for the landlord. I find that, despite their efforts, the tenants are responsible for costs to the landlord as follows,

Item	Amount
Rental Loss (3 months' rent x \$1925.00)	\$5775.00
Rental Loss - difference for remainder of fixed term from Dec 2017 (7 months x \$325.00)	1410.00
Liquidated Damages	962.50
Window cover (blinds) cleaning	155.40
Suite cleaning	70.88
Less Security & Pet damage Deposit & key deposit	-1925.00
Filing fee	100.00
<b>Total Monetary Order to Landlord</b>	<b>\$6548.78</b>

Pursuant to section 72(2), the landlord is entitled to retain the tenants' \$962.50 security and \$962.50 pet damage deposit towards the monetary order issued in this decision. Although there is no provision for a key deposit under the Act, I find that the landlord may also retain the \$225.00 key deposit towards the monetary amount granted to the

landlord.

As the landlord was successful in this application, the landlord is entitled to recover the \$100.00 filing fee for this application.

Conclusion

I issue a monetary order to the landlord in the amount of **\$6548.78**.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 4, 2018

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Residential Tenancy Branch