



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCL-S, FFL

### Introduction

This decision pertains to the Landlord's application for dispute resolution made on October 10, 2017, under the *Residential Tenancy Act* (the "Act"). The Landlord seeks the following relief:

1. a monetary order for money owed or compensation for damage or loss; and,
2. a monetary order granting recovery of the filing fee.

Both the Landlord's agent and the Tenant (J.B.) attended the hearing before me, and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Landlord testified, and the Tenant acknowledged, that the Notice of Dispute Resolution Hearing package was served by way of registered mail in early October 2017. The Tenant testified that they have had sufficient opportunity to review the Landlord's evidence. I am satisfied that the Tenants were served in accordance with the Act.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application will be considered in my decision.

### Issues to be Decided

1. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
2. Is the Landlord entitled to a monetary order granting recovery of the filing fee?

### Background and Evidence

The Landlord testified that there was a written tenancy agreement (the "Agreement") for a fixed term of twelve months, commencing on December 1, 2016 and ending on November 30, 2017. Rent was \$1,570.00 (which included parking for \$75.00) and was due on the first of the month. The Tenants paid a security deposit of \$647.50.

The Landlord testified regarding, and pointed me to, paragraph 5 of the Agreement, which states the following (the underlined numbers were filled in by hand):

LIQUIDATED DAMAGES: If the tenant ends this tenancy agreement in less than 12 months from the start of this tenancy agreement, the tenant agrees to pay \$500. to the landlord as a genuine pre-estimate of the landlord's costs for re-renting the rental unit, which costs include advertising and administration. The tenant(s) agree that the liquidated damages fee is due and payable at the time they give notice of their intention to end this agreement prior to the date originally agreed to.

The Landlord testified that, from their perspective, the Tenants were fully aware of the liquidated damages clause, evidenced by the fact that the Tenants' initials "EV" and "JB" appear next to paragraph 5 of the Agreement.

The Tenants ended the tenancy two months early, in September 2017, thus invoking the Agreement's liquidated damages fee of \$500.00. The Landlord testified that they rented out the rental unit for a new tenancy commencing October 1, 2017. The Tenant disagreed that they moved out two months early. Rather, they testified that they moved out only one month early. The Landlord submitted into evidence a copy of a document wherein the Tenants, on September 7, 2017, stated that they no longer wished to rent the rental unit, and that they would potentially be responsible for rent for the months of October 2017 and November 2017.

The Tenant testified that "everything the Landlord said sounds completely reasonable." They acknowledged that they were aware of the liquidated damages clause, and have no dispute with the existence of such a clause. However, the Tenant disputed that the amount claimed by the Landlord is reasonable. The Tenant testified that, in this tight rental market, tenants basically have to sign whatever landlords put in front of them.

The Tenant further testified that they spoke with a few different property managers in the city, inquiring as to what a reasonable liquidated damages fee should be. They were told that a reasonable liquidated damages fee “would be in the range of \$150 to \$200.”

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

*Residential Tenancy Policy Guideline 4. Liquidated Damages*, page 1, outlines the test that I must apply in determining whether a liquidated damages clause is a penalty clause or a liquidated damages clause. The test requires that I consider the following:

- Whether the sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach;
- Whether an agreement is to pay money, and a failure to pay requires that a greater amount be paid, the greater amount is a penalty; and,
- Whether, if a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.

The sum of \$500.00 is not, I find, extravagant in comparison to the greatest loss that could follow a breach. In this case, the Landlord *could* have suffered a loss of rent in the amount of \$3,140.00 from the Tenants’ breach of the Agreement. And, while the Tenant testified that they had done some research on what other landlords charge for liquidated damages, they did not provide any evidence or provide a convincing argument that the Landlord’s claimed amount was “extravagant in comparison to the greatest loss that could follow a breach.”

The Tenant testified that the Landlord rented out the rental unit for October 1, 2017, thereby incurring minimal costs. Under Policy Guideline 4, a tenant must pay the stipulated sum of a liquidated damages clause even where the actual damages are negligible or non-existent. Liquidated damages are meant to cover potential losses incurred by a tenant’s breach of a tenancy agreement. Finally, neither the second or third parts of the test apply to the liquidated damages being claimed here. As such, I find that the Landlord’s liquidated clause is valid.

Taking into consideration all of the evidence and testimony presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlord has

met the onus of proving their claim for money owed.

Pursuant to section 67 of the Act, I find that the Landlord is entitled to a monetary award of \$500.00 for liquidated damages, and I also find that the Landlord is entitled to recover the \$100.00 filing fee. I order that the entire amount of the security deposit held (\$647.50) be applied to the award granted to the Landlord (\$600.00), and order that the Landlord refund to the Tenants the balance of \$47.50.

### Conclusion

The Landlord is entitled to liquidated damages as set out in the tenancy agreement and the filing fee for the Application, totalling \$600.00. The Tenants are granted a monetary order in the amount of \$47.50. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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