



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, MNDCL-S, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*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.

Tenant VB (the "tenant") and the landlord's agent (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed she had authority to speak on behalf of tenant ES.

The tenant confirmed that both her and tenant ES received the landlord's application for dispute resolution package and testified they did not provide any documentary evidence for this hearing. As the tenant did not raise any issues regarding service of the application or the evidence, I find that the tenants were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

Is the landlord authorized to recover the filing fee for this application from the tenant?

### Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on December 1, 2017 on a fixed term until November 30, 2018. Rent in the amount of \$1,250.00 was payable on the first of each month. The tenants remitted a security deposit in the amount of \$625.00 at the start of the tenancy, which the landlord still retains in trust.

On February 1, 2018 the tenants provided written notice to the landlord that they would vacate the rental unit by February 28, 2018. The tenants vacated the rental unit on February 28, 2018.

The landlord applied for compensation in the amount of \$1,950.00, including the following;

<b>Item</b>	<b>Amount</b>
March rent	\$1,250.00
Liquidated damages	\$600.00
Filing fee	\$100.00
<b>Total Monetary Claim</b>	<b>\$1,950.00</b>

In reply, the tenant testified that as per their written notice dated February 1, 2018, the tenants vacated the unit due to three deficiencies with the tenancy. In particular, the tenant testified that it was issues with the heat, dryer and noise that lead them to end the tenancy early.

### Analysis

Based on the testimony of the parties and submitted tenancy agreement, the parties had a fixed term tenancy that was scheduled to end on November 30, 2018. Although the tenants provided written notice of their intent to end the tenancy on February 28,

2018, they attempted to end the tenancy earlier than the date specified in the fixed term tenancy agreement, which is not in compliance with section 45 of the *Act*.

Pursuant to the *Residential Tenancy Policy Guideline, 30: Fixed Term Tenancies* ("*Guideline 30*"), neither a landlord nor a tenant can end a fixed term tenancy unless for cause or by written agreement of both parties. The parties in this case did not mutually agree to end the fixed term tenancy. Instead the tenants alleged cause, specifically issues with the heat, dryer and noise.

A tenant ending a fixed term tenancy for cause is required to provide proper written notice of breach of a material term to the landlord. Notice must include a deadline the breach must be repaired by and notification the party will end the tenancy if the breach is not rectified by the deadline. I find the tenants provided insufficient evidence to establish they provided proper notice of a breach of a material term of the tenancy agreement and therefore find the tenants did not end this tenancy in accordance with the *Act*.

Pursuant to the *Residential Tenancy Policy Guideline, 5: Duty to Minimize Loss* ("*Guideline 5*"), when a tenant ends the tenancy agreement contrary to the provisions of the *Act*, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit. Based on the landlord's testimony and documentary evidence I find the landlord mitigated his loss by promptly advertising the unit and securing a tenancy effective April 1, 2018. Therefore I find that the landlord is entitled to \$1,250.00 for March rent.

Because the tenants ended the tenancy contrary to the *Act*, and the parties signed an agreement that included a liquidated damage clause, the tenants may be held liable for the amount stipulated in that clause, even if the landlord did not incur this amount of actual loss or damages.

However, in order to enforce a liquidated damage clause in a tenancy agreement or addendum, it must first be determined whether the clause is valid. Specifically it must be determined whether the amount agreed to is a genuine pre-estimate of the loss at the time the contract was entered into or a whether the amount constitutes a penalty.

Pursuant to *Residential Tenancy Policy Guideline, 4: Liquidated Damages*, I find the liquidated damage clause in the tenancy agreement does not constitute a penalty as it is not extravagant in comparison to the greatest loss that could follow a breach, it does not indicate failure to pay results in a greater amount having to be paid and it does not

require a single lump sum to be paid on occurrence of several events, some trivial some serious.

Instead, I find the liquidated damage clause is a genuine pre-estimate of the loss at the time the contract was entered into, thereby making the clause valid. Therefore, I find the landlord is entitled to recover liquidated damages in the amount of \$600.00 from the tenants.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$625.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$1,225.00. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$1,325.00.

### Conclusion

Item	Amount
March rent	\$1,250.00
Liquidated damages	\$600.00
Security deposit	(\$625.00)
Filing fee	\$100.00
Total Monetary Order	\$1,325.00

I issue a monetary order in the landlord's favour in the amount of \$1,325.00 against the tenant.

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: September 28, 2018

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Residential Tenancy Branch