



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, MNSD, FF

### Introduction

This hearing was convened in response to an application 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 Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The following are agreed facts: The tenancy under written agreement started on June 1, 2018 for a fixed term to end May 31, 2020. At the outset of the tenancy the Landlord collected \$950.00 as a security deposit. Rent of \$1,900.00 was payable on the first day of each month. The Tenants gave a full month’s written notice and moved out of the unit on February 27, 2019. The tenancy agreement includes a term in an addendum to the lease that provides as follows:

If the tenant ends the fixed term tenancy, or is in breach  
of the Residential Tenancy Act or a material term of this

agreement that causes the landlord to end the tenancy before the end of the term as set out in the lease, or any subsequent fixed term, the tenant will pay the Landlord the sum of \$1,750.00 as liquidated damages and not as a penalty. Liquidated damages are an agreed pre-estimate of the landlord's costs of re-renting the rental unit and must be paid in addition to any other amounts owed by the tenant, such as unpaid rent, loss of income, or for damage to the rental unit or residential property.

(Reproduced as written)

The Landlord states that another agent for the Landlord was present for the signing of the tenancy agreement and does not know whether the liquidated damages section was pointed out to the Tenants at the time of their signing the tenancy agreement. The Landlord states that the Tenants did sign each page of the addendum and that they would therefore have seen the clause. The Landlord states that the costs are a genuine estimate of the costs to re-rent the unit and include costs for preparing the paperwork and for a credit check. The Landlord claims \$1,750.00 as liquidated damages.

The Landlord states that the unit was advertised online and at the same rental rate immediately upon receipt of the Tenants' notice to end the tenancy. The Landlord states that the advertisements did not bring sufficient calls so near the end of March 2019 the Landlord reduced the rental amount to \$1,800.00 per month and also added the allowance for pets. The Landlord states that the unit was rent for May 1, 2019 at \$1,800.00 per month. Although the Landlord's application sets out a claim for \$10,000.00 in compensation for unpaid rent, at the hearing the Landlord reduced the claim to \$3,800.00 in unpaid rent for March and April 2019.

The Tenant states that they were not aware that the Landlord would require a liquidated damages provision until they were near to moving into the unit and that as they had already given notice for their previous rental they had no choice but to accept the

liquidated damages. The Tenant states that a few days after signing the tenancy agreement they informed the other agent that they did not understand the liquidated damages section and were informed that it was for the cost of re-renting the unit. The Tenant states that they believed after some research that the liquidated damages amount was a sum that would be payable if ending the tenancy early and that they would therefore not be liable for ongoing rent to the end of the tenancy. The Tenant states that they had to end the tenancy due to family matters requiring their move to be closer to that family.

### Analysis

“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. This amount limits or determines in advance the damages flowing from the early end of the tenancy or a breach of a fixed term. The clause further provides that such monies are due to the landlord in addition to other amounts such as unpaid rent, loss of income, or for damage to the rental unit or residential property. I note that the additional amounts for unpaid rent, loss of income or damage to the property would flow from different breaches of the tenancy agreement or Act such as not paying rent while occupying the unit or not leaving with damages such that the re-rental of the unit is delayed leaving a loss of rental income. 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.

The Landlord has claimed unpaid rent for two months based on the breach of the fixed term. As the Landlord is already seeking liquidated damages for this same breach, I consider that the Landlord is making a conflicting claim that would result in double compensation. As the unpaid rent claim is a claim that flows from an early end of tenancy or breach of the fixed term, as the damages arising from this breach have been determined by agreement in advance at \$1,750.00, I resolve any conflict that would

arise with a claim for unpaid rent for the same breach in favor of the Tenant and find that the Landlord is only entitled to the liquidated damages amount of **\$1,750.00**.

Based on the Tenant's evidence that they were aware of the tenancy agreement including the liquidated damages section at the time of signing the agreement, and although I consider the late introduction of this term to be problematic, as the Tenants gave evidence that they apparently relied on this term to end the tenancy early without having to pay further rent or lost rental income to the end of the tenancy, I find that the Tenants have not shown any reason why this sum should not now be payable.

As the Landlord's application has met with some success I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,850.00**. Deducting the security deposit plus zero interest of **\$950.00** from this entitlement leaves **\$900.00** owed to the Landlord.

### Conclusion

I Order the Landlord to retain security deposit plus interest of \$950.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$900.00**. 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 Act.

Dated: May 22, 2019

---

Residential Tenancy Branch