



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC FF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A participatory hearing, via teleconference, was held on June 4, 2019. The Tenant applied for monetary compensation for damage or loss under the *Residential Tenancy Act* (the "Act").

Both parties were present at the hearing. The Landlord did not provide any documentary evidence. The Tenant stated he served his Notice of Hearing and evidence by registered mail on February 22, 2019, and March 1, 2019. The Tenant stated that both packages contained the same information. The Tenant uploaded registered mail tracking information. The Landlord stated he did not go and pick up the package, although he did get the delivery slip. Pursuant to section 88 and 90 of the Act, I find the Landlord is deemed to have received this package on February 27, 2019, the fifth day after it was sent by registered mail.

All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The parties disagree with respect to whether or not there was a valid tenancy and a tenancy agreement. The parties appear to have signed two different tenancy agreements. The parties agree that the most recent agreement was signed on February 14, 2019, a copy of which was provided into evidence. This tenancy agreement contained an addendum with some additional terms and conditions. The Landlord acknowledged signing the agreements but stated that the Tenant never paid him any security deposit, or any money, which is required in order to solidify the agreement. Both parties agree that the Tenant never moved into the rental unit, nor did he pay any money to the Landlord as a security deposit, or as rent. The Landlord stated that he feels the Tenant is trying to extort money out of him. The Tenant feels the Landlord should be responsible for the tenancy not panning out and should have to pay him compensation.

I note the following portion of the Act:

#### ***Start of rights and obligations under tenancy agreement***

*16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit*

In order to enter into a contract, mutual declarations of intent must be exchanged. In this case, the Landlord agreed to rent the premises to the Tenant for a price. The Tenant agreed to pay this price, along with a security deposit, by a certain date (which had not yet passed). In most cases, a contract is considered to have been “entered into” once the material terms of the contract have been agreed upon (an offer, and its acceptance). I note that the Tenant had yet to pay his security deposit. However, I find the parties rights and obligations under the tenancy agreement began at the time they signed the agreement (offer and acceptance). On the most recent agreement, this date was February 14, 2019.

I find there was a valid tenancy agreement, despite no deposit being paid, considering the Tenant had until the first day of the tenancy (March 1, 2019) to pay the deposit. It appears the agreement was cancelled by the Landlord before this time had passed, sometime in late February 2019. I find there was a valid tenancy agreement, and I accept jurisdiction. Below is my analysis of the issues on the application.

### Issues to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss under the Act?

### Background and Evidence

The parties agreed upon the following:

- The most recent tenancy agreement was signed by both parties on February 14, 2019, and the tenancy was set to begin on March 1, 2019, for \$2,500.00 per month.
- The Tenant was supposed to pay a \$1,250.00 security deposit by March 1, 2019.
- The Tenant never moved in.

The Tenant stated that the Landlord texted him (provided copies into evidence) on February 18, 2019, saying that he wanted to cancel the tenancy agreement. The Tenant stated he could not get a hold of the Landlord after this time, and so he never moved in. The Tenant pointed to the following term in the addendum:

1. If the Owner cancels the Residential Tenancy Agreement of February 14, 2019, before the move in date of March 1, 2019, then the Owner will pay \$5,000 penalty to the Tenants. If the Residential Tenancy Agreement of February 14, 2019 proceeds and Tenants move in on or about March 1, 2019, then the Owner does not have to pay the \$5,000 penalty.

Pursuant to this term in the addendum, the Tenant is looking for \$5,000.00 because the Landlord cancelled prior to the tenancy starting.

The Landlord feels the Tenant is trying to extort money out of him. The Landlord stated that there should be no valid tenancy agreement without any security deposit being paid or any money changing hands. The Landlord denies that he had any bad intentions.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

The Tenant is seeking compensation because the Landlord breached and cancelled the tenancy agreement. I note that the parties have agreed, in writing, as per the tenancy

agreement provided into evidence from February 14, 2019, that the Landlord is to pay the Tenant \$5,000.00 if he cancels the tenancy agreement prior to the tenancy starting.

Residential Tenancy Policy Guideline 4 provides 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. If a liquidated damages clause is determined to be valid, the party must pay the stipulated sum unless the sum is found to be a penalty.

In this case, I find the Landlord breached the tenancy agreement by unilaterally cancelling it, prior to moving to Tenant moving in. However, I find that the liquidated damages clause in the tenancy agreement is not an enforceable term. I make this finding, in part, because there is insufficient evidence to show that the liquidated damages amount of \$5,000.00 is a genuine pre-estimate of the any losses that would have been incurred by the Tenant. I find that the amount is based on the two times the monthly rent. I find that the structure of the tenancy agreement stipulating the amount of two months' rent is excessive and is a penalty. The Tenant's claim is dismissed, without leave to reapply.

### Conclusion

The Tenant's application is dismissed, in full, without leave to reapply.

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: June 5, 2019

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Residential Tenancy Branch