



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNCDL-S, MNDL-S, FFL

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "Act"), made on April 5, 2019. The Landlord applied for a monetary order for damages to the rental unit, for permission to retain the security deposit, and to recover the filing fee paid for the application. The matter was set for a conference call.

Both the Landlord and the Tenants attended the hearing and were each affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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

### Issues to be Decided

- Is the Landlord entitled to a monetary order for damages?
- Is the Landlord entitled to retain the security deposit for this tenancy?
- Is the Landlord entitled to the return for their filing fee for this application?

### Background and Evidence

The parties agreed that the tenancy began on May 1, 2018, as a one-year fixed term tenancy. Rent in the amount of \$1,935.00 was to be paid by the first day of each month and the Landlord had been given a \$967.50 security deposit at the outset of the

tenancy. The Landlord provided a copy of the tenancy agreement and seven-page addendum into documentary evidence.

The parties agreed that the Tenants gave written notice to end their tenancy early as of March 31, 2019. The Tenants testified that they understood they were ending their fixed term tenancy early and that in order to mitigate any potential loss due to this they assisted the Landlord in securing a new tenant for the rental unit. Both parties agreed that the Tenants moved out as of 1:00 p.m. on March 31, 2019, and that a new renter moved in on that same day.

The Landlord testified that there is a liquidated damages clause in the tenancy agreement and that due to the Tenants ending their tenancy early, he is requesting the recovery of \$967.50 in liquidated damages. The Landlord testified that the actual liquidated damages clause in the tenancy agreement was for \$3,925.00 but that he is only seeking to enforce \$967.50 of that agreement, as that figure represents his actual costs. The Landlord was questioned as to why his liquidate damages clause was over 200 times the value of the monthly rent for this rental unit. The Landlord testified that it had cost him that that amount in other tenancy, so we included that amount in all his tenancy now. The Landlord testified that the \$967.50 represents his costs for advertising, showings, application reviews and security. The Landlord submitted a copy of a receipt for the \$967.50 into documentary evidence.

The Tenants testified that they had assisted the Landlord in securing a new tenant and that the Landlord had verbally told them, that he would not require the liquidated damages fee as they had assisted him. The Landlord disagreed with the Tenants claim that he had told them he would not be charging the liquidated damages fee.

The parties agreed that they conducted the move-out inspection on March 31, 2019; however, the parties did not agree as to the condition of the window blinds in the rental unit as noted on the move-out inspection. The Landlord submitted a copy of the move-in/move-out inspection report into documentary evidence.

The Landlord claimed that five of the window blinds, in the rental unit, did not work properly or were missing parts at the end of the tenancy. The Landlord testified that it cost him \$171.39 in repair the blinds and an additional \$70.00 in an access fee to have the window blinds repair person provided with access to the rental unit. The Landlord submitted a copy of two receipts for the repairs and access, and eight black and white pictures of the window blinds into documentary evidence.

The Tenants testified that the window blinds had been cleaned and were in good working order at the end of the tenancy. The Tenants testified that the Landlord is attempting to charge them for the repair of normal wear and tear. The Tenants also testified that they had written "Tenants do not agree to the amount above" on the move-out inspection as they did not agree with what the Landlord had wrote on the move-out report and that they do not feel that they are responsible for the costs of normal wear and tear.

The Landlord testified that provision number 29 of the addendum for this tenancy included a clause that if the Tenants left before the end of the fixed term, that they were responsible for the cost to have the locks changed on the rental unit. Addendum 29 reads as follows:

"29) The tenant agrees in a one-year lease. to pay to re-key all locks. handsets and dead bolts and to pay to cut the required number of keys for these locks to suite and common areas if the: breach their 1 year lease agreement. If the tenant stays the full term of the lease. these costs to re-key, will not apply."

The Landlord is requesting to recover \$40.00 for his cost to have the locks changed on the rental unit at the end of the tenancy. The Landlord confirmed that the Tenants returned the keys to the rental unit at the end of the tenancy but that they change the lock after each tenancy, and since the Tenants moved out early they were now responsible for the cost to have the locks changed.

The Tenant testified that they returned all of the keys to the real unit and that they are not responsible for having the locks changed on the rental unit.

The Landlord testified that one of the bedroom lights was not working properly at the end of the tenancy. The Landlord is requesting to recover \$17.50 that he paid to have the light repaired.

The Tenants agreed that the bedroom light was not working properly at the end of tenancy and agreed that they owed the Landlord the \$17.50 to have the light repaired.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the parties entered into a one-year fixed term tenancy, beginning on May 1, 2018, in accordance with the *Act*.

Section 45(2)(b) of the *Act* states that a tenant cannot end a tenancy agreement earlier than the date specified in the tenancy agreement.

**Tenant's notice**

**45(2)** A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that this tenancy could not have ended in accordance with the *Act* until April 30, 2019. I find that the Tenants failed to comply with the *Act* when they issued notice to end this tenancy as of March 31, 2019.

I accept the Tenant's testimony that they assisted the Landlord in re-rent the unit and that the Landlord was able to find a new renter for the rental unit as of March 31, 2019, and that the Landlord suffered no loss of rental income for this tenancy. I also accept the Tenants testimony that they understood that they were ending their tenancy early and were assisting the Landlord in locating a new tenant to take over the rental unit as a means to mitigate any potential loss.

In this case, the Landlord is seeking to enforce the liquidated damages clause in the tenancy agreement, which states as follows:

**"LIQUIDATED DAMAGES.**

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 **\$3,925.00** liquidated damages and not as a penalty for all costs associated with re-renting the rental unit. Payment of

such liquidated damages does not preclude the landlord from claiming further rental revenue losses that will remain unliquidated.”

The Residential Tenancy Policy Guideline # 4 speaks to liquidated damages. It states:

“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.

There are a number of tests to determine if a clause is a penalty clause or a liquidated damages clause. These include:

- A sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach.
- 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.
- 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.

If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent. Generally, clauses of this nature will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum. Further, if the clause is a penalty, it still functions as an upper limit on the damages payable resulting from the breach even though the actual damages may have exceeded the amount set out in the clause.

A clause which provides for the automatic forfeiture of the security deposit in the event of a breach will be held to be a penalty clause and not liquidated damages unless it can be shown that it is a genuine pre-estimate of loss.

If a liquidated damages clause is struck down as being a penalty clause, it will still act as an upper limit on the amount that can be claimed for the damages it was intended to cover.”

I have reviewed the liquidated damages clause for this tenancy, and I find the sum of \$3925.00 in liquidated damages included in this in the tenancy agreement to be extravagant in comparison the genuine loss testified to by the Landlord, followed the Tenant's breach of this tenancy agreement. Therefore, I find the liquid damages clause for this tenancy agreement to constitute a penalty.

However, I will consider the Landlords application in regard to his genuine costs for re-rent the rental unit. The Landlord is requesting \$967.50 in the recovery of his costs to re-rent the rental unit. I have reviewed the invoice provided into documentary evidence by the Landlord, and I find that the invoice does not provide a breakdown of the cost that the Landlords testified to during these proceedings, nor does it provide any account as to how the value of \$967.50 was reached. In the absence of a detailed accounting of this charge, I am unable to determine if this charge reflects the genuine costs for re-rent the rental unit. Consequently, I dismiss this position of the Landlord's claim in its entirety.

As for the Landlords claim to recover \$171.39 in blind repair and \$70.00 in a unit access charge. I have reviewed all evidence submission form both parties regarding the condition of the window blinds at the end of this tenancy, and I find the Tenants' video evidence, depicting working blinds to be a reliable account of the condition of the blinds at the end of this tenancy. I have also reviewed the Landlords invoice for the blind repair work he had completed, and I find that the Landlord's application is an attempt to charge the Tenants for the cost associated with the repair of normal ware a tear to the window blinds, which is not the responsibility of a tenant to pay. As such, I dismiss the Landlords claim for the repair cost of \$171.39 and the \$70.00-unit access charge.

The Landlord has also requested to recover his costs to re-key the rental unit in the amount of \$40.00. Section 25 of the act speaks to costs associated with changing locks or re-key a rental unit:

***Rekeying locks for new tenants***

***25 (1) At the request of a tenant at the start of a new tenancy, the landlord must***

*(a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and*

*(b) pay all costs associated with the changes under paragraph (a).*

Pursuant to section 25(1) of the *Act*, I find that the *Act* places the responsibility for all costs associated with rekeying locks to a rental unit on the landlord. I acknowledge the Landlord's argument that he had included an addendum in this tenancy agreement that the Tenants would be responsible for covering the cost of rekeying if they ended their tenancy early. The Landlord was directed to section 5 of the *Act*, which states:

***This Act cannot be avoided***

*5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.*

*(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.*

The Landlord was advised and cautioned, during this hearing that pursuant to section 5 of the *Act*, he should not be attempting to contract contrary to this *Act*.

I have reviewed provision 29 of the attached addendum to this tenancy agreement, and I find that this provision is an attempt to contract contrary to the *Act*, and pursuant to section 5 of the *Act*, I find that provision 29 of the attached addendum to this tenancy agreement is of no effect. Consequently, I dismiss the Landlords claim to recover \$40.00 in re-keying cost in its entirety.

During the hearing, both parties agreed that a light in one of the bedrooms was not working properly at the end of the tenancy. Both parties agreed to a cost of \$17.50 for the repair of that light. Accordingly, I grant permission to the Landlords to retain \$17.50 and from the Tenants' security deposit in full satisfaction of the agreed upon amount.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been found to have breached the *Act* during this tenancy, I find that the Landlord is not entitled to the return of the filing fee for this application.

I order the Landlord to return the remainder of the security deposit, in the amount of \$950.00, that he is holding for this tenancy to the Tenants within 15 days of receiving this decision.

I grant permission to the Tenants to file for the return of double their security deposit and pet damage deposit if the Landlord does not comply as ordered.

Conclusion

I grant permission to the Landlord to retain \$17.50 from the Tenants' security deposit in full satisfaction of the above award.

I order the Landlord to return the remainder, \$950.00, of the Tenants' security deposit to the Tenants within 15 days of receiving this decision.

I grant permission to the Tenants to file for the return of double their security deposit if the Landlord does not comply as ordered.

I grant a conditional Monetary Order to the Tenants, pursuant to section 38 of the Act, in the amount of **\$950.00**. The Tenants are provided with this Order in the above terms, and if the Landlord does not comply as ordered the Tenants must serve the Landlord with this Order as soon as possible. Should the Landlord 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: July 5, 2019

---

Residential Tenancy Branch