



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT LIMITED  
PARTNERSHIP and [tenant name suppressed to  
protect privacy]

## **DECISION**

Dispute Codes      MNDCL-S, FFL

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation, claiming against the tenant's security deposit and for recovery of the filing fee paid for this application.

The landlord's agent (hereafter "landlord") attended the telephone conference call hearing; the tenant did not attend.

The landlord testified that he served the tenant with their Application for Dispute Resolution and Notice of Hearing by registered mail on May 8, 2019. The landlord provided the copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. The tracking number is on the style of cause page on this Decision.

The landlord also said the registered mail was collected on May 10, 2019.

Based upon the submissions of the landlord, I accept the tenant was served notice of this hearing and the landlord's application in a manner complying with section 89(1) of the Act and the hearing proceeded in the tenant's absence.

I have reviewed all evidence before me that met the requirements of the Dispute Resolution Rules of Procedure ("Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation allowed under the Act and Residential Tenancy Policy Guideline and to recover the filing fee paid for this application?

Background and Evidence

The written tenancy agreement submitted by the landlord shows that this one year, fixed term tenancy began on June 1, 2018, to end on May 31, 2019, for a monthly rent of \$1,560.00, and a security deposit paid by the tenant in the amount of \$780.00.

In support of their application, the landlord submitted that he received written notice from the tenant in March 2019, that he was vacating the rental unit by the end of April 2019. The landlord provided a copy of the written notice.

The landlord's monetary claim is \$780.00 for liquidated damages, pursuant to the term in the written tenancy agreement which allows for that amount if the tenant terminated the tenancy before the end of the original term, in this case, May 31, 2019. The landlord submitted a copy of the written tenancy agreement, which shows the tenant agreed to this amount, which was the equivalent to his security deposit.

The landlord explained the tenant agreed to pay this amount as liquidated damages, which was intended to compensate them for their time and expense in advertising the rental unit as a result of the early end to the tenancy by the tenant.

The landlord requested to keep the tenant's security deposit in satisfaction of their monetary claim of \$780.00.

Analysis

Under section 45(2) of the Act, a tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term. In this case, the written tenancy agreement shows the fixed term ending on May 31, 2019.

Residential Tenancy Branch Policy Guideline #4 (Liquidated Damages) states that in order to be enforceable, a liquidated damages clause in a tenancy agreement must be a genuine pre-estimate of 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 this case, I find the written and signed tenancy agreement required that the tenant pay a liquidated damages fee of \$780.00 in the event the tenant ended the fixed term tenancy prior to the date mentioned, here May 31, 2019. I find the landlord submitted sufficient evidence to show that this term is intended to offset costs associated with procuring a new tenant. After reviewing this clause, I do not find the amount is unreasonable and I do not find it is a penalty. Therefore, I find the tenant is responsible for paying the liquidated damages fee of \$780.00 and that the landlord has established a monetary claim in that amount.

I also allow the landlord recovery of their filing fee of \$100.00 paid for this application.

Due to the above, I find the landlord is entitled to a monetary award of \$880.00, comprised of liquidated damages of \$780.00 and the filing fee paid for this application in the amount of \$100.00.

At the landlord's request, I direct them to retain the tenant's security deposit of \$780.00 in partial satisfaction of their monetary award of \$880.00. I therefore grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$100.00.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is advised that costs of such enforcement may be recoverable from the tenant.

### Conclusion

The landlord's application for monetary compensation is granted.

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: August 9, 2019

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Residential Tenancy Branch