



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL -S; FFL

### Introduction

This hearing dealt with the landlord's application for monetary compensation for damages or loss under the Act, regulations or tenancy agreement; and, authorization to retain the tenant's security deposit.

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing I confirmed that both parties had exchanged their respective hearing documents and materials upon each other. I admitted their materials into evidence and considered it in making my decision.

In reviewing the landlord's Application for Dispute Resolution shortly after the hearing started, the landlord withdrew his request to recover the filing fee from the tenant. The application was amended accordingly.

### Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation, as claimed?
2. Is the landlord authorized to retain the security deposit or should it be returned to the tenant?

### Background and Evidence

The tenant and the landlord's agent entered into a tenancy agreement that started on April 1, 2019 and was set for a fixed term to end on March 31, 2020. The tenant paid a security deposit of \$600.00 and was required to pay rent of \$1,200.00 on the first day of

every month. The tenancy ended early, on January 31, 2020, after the tenant gave the landlord notice of his intention to end the tenancy early due to his inability to pay rent. The landlord re-rented the unit starting February 1, 2020 for the monthly rent of \$1275.00.

By way of this Application for Dispute Resolution, filed on February 4, 2020, the landlord is seeking compensation of \$600.00 from the tenant.

During the hearing, the landlord submitted that the amount claimed is to compensate him for the loss he suffered to find a replacement tenant. The landlord testified that he employed his agent to find a replacement tenant and his agent charged him \$600.00 to do so. The landlord stated he may have a receipt for the amount he paid amongst his papers but he did not have a receipt in front of him at the hearing and he did not produce it as evidence prior to the hearing.

In filing the Application for Dispute Resolution, the landlord indicated the amount claimed represents and “administrative charge” payable because the tenant breached the fixed term tenancy agreement. The landlord pointed to term 15 of an Addendum to the tenancy agreement signed by both parties at the start of the tenancy. When I asked the landlord the basis for term 15 and in particular the amount of the administrative charge, the landlord stated his agent had drafted the Addendum.

The Addendum provides that the tenant agrees to several terms, including term 15, which I have reproduced below:

15. To pay an administration charge of one half a month's rent to break a lease. This does not release the tenant from his/her responsibilities under the Residential Tenancy Act and the tenant acknowledges that if the landlord is not able to re-rent the property immediately upon the tenant vacating, the tenant may be held liable for all rents due for the remainder of the lease or until such time as the property can be rented.

The landlord submitted that the tenant signed the Addendum so term 15 is binding upon him and the landlord is entitled to the administrative charge of \$600.00.

The tenant submitted the tenant ended the tenancy early due to financial hardship that resulted from his loss of employment; the landlord did not suffer a loss as a result of the tenant ending the tenancy before the expiry of the fixed term especially considering the landlord re-rented the unit starting on February 1, 2020 for \$75.00 more per month; and, the amount claimed by the landlord is a penalty and not a valid liquidated damages clause. The tenant also submitted that he is entitled to double security deposit.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Upon consideration of everything before me, I provide the following findings and reasons.

The landlord pointed to term 15 of the Addendum as a basis for the claim; however, I find the term to be inconsistent with the Act and the Residential Tenancy Regulations (“the regulations”) and not enforceable, as explained below.

The Act provides for amounts a landlord may charge a tenant. Section 6 of the Act provides that a term in a tenancy agreement, including an Addendum, is not enforceable if the term, among other things, is inconsistent, conflicts with or violates the Act or the regulations. The amounts a landlord may charge or recover from a tenant include rent, utilities, non-refundable fees, and damages or losses that result from the tenant’s breach of the Act, regulations or tenancy agreement.

The amount claimed by the landlord is not rent or utilities. I proceed to analyze whether the “administrative charge” it would be a permissible non-refundable fee. Non-refundable fees are provided in section 7 of the regulations. Section 7 of the regulations provides as follows:

#### **Non-refundable fees charged by landlord**

- 7** (1) A landlord may charge any of the following non-refundable fees:
- (a) direct cost of replacing keys or other access devices;
  - (b) direct cost of additional keys or other access devices requested by the tenant;

- (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
- (d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;
- (e) subject to subsection (2), a fee that does not exceed the greater of \$15 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move;
- (f) a move-in or move-out fee charged by a strata corporation to the landlord;
- (g) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

As seen above, section 7 of the regulations does not provide for a fee or administrative charge for breach of a fixed term. As such, I find the landlord may not charge a fee or administrative charge for the tenancy ending the tenancy early.

Undeniably the tenant breached the tenancy agreement by ending the tenancy before the expiry of the fixed term. The tenant submitted that the reason he breached the fixed term is due to financial hardship. Financial hardship does not give a tenant a legal basis to breach a fixed term. Rather, the Act provides very limited and specific circumstances where a tenant may legally end a fixed term early and financial hardship is not one of them. At issue is whether the breach caused the landlord to suffer a loss and if so, the value of the loss, if any. The landlord testified that he paid his agent to find a replacement tenant due to the tenant ending the tenancy early and he paid \$600.00 to his agent; however, the landlord did not produce a receipt or other proof of payment to corroborate his statement. Therefore, I find the landlord did not sufficiently prove he suffered a loss equivalent to or greater than the amount claimed.

The tenant raised the issue of liquidated damages. Liquidated damages are provided for in Residential Tenancy Branch Policy Guideline 4: *Liquidated damages*. Liquidated damages are a genuine pre-estimate of damages or losses for ending a fixed term tenancy early that the parties agree upon at the start of the tenancy and are payable if

the tenant breaches a fixed term tenancy agreement by ending the tenancy early. However, I find term 15 of the Addendum is not worded in such a way that clearly communicates that the parties agreed when the tenancy started that one-half of a month's rent is a genuine pre-estimate of damages or losses associated to re-renting the unit. Therefore, I do not consider term 15 to constitute a valid and enforceable liquidated damages clause.

In light of the above, I find the landlord did not sufficiently prove a legal entitlement of the Act or its regulations to the compensation he seeks from the tenant and I dismiss his claim without leave to reapply.

Having dismissed the landlord's claim, I order the landlord to return of the security deposit to the tenant.

I do not credit the tenant with double the security deposit as the tenant requested. The tenancy ended on January 31, 2020 and the landlord made a claim against the security deposit on February 4, 2020 which is well within the landlord's 15 day time limit for doing so as provided under section 38(1) of the Act. Accordingly, the tenant remains entitled to return of the single amount of the security deposit.

Provided to the tenant with this decision is a Monetary Order in the sum of \$600.00 representing return of the single amount of the security deposit.

### Conclusion

The landlord's claim against the tenant and the tenant's security deposit is dismissed without leave to reapply.

The landlord is ordered to return the security deposit to the tenant without delay. The tenant is provided a Monetary Order in the amount of \$600.00 to ensure return of the security deposit.

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 24, 2020

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Residential Tenancy Branch