



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, FFL (Landlord)  
                             MNSD, MNDCT, FFT (Tenant)

### Introduction

This hearing was convened by way of conference call in response to cross applications for dispute resolution filed by the parties.

The Landlords filed the application May 13, 2020 (the “Landlords’ Application”). The Landlords sought to recover unpaid rent, to keep the security deposit and reimbursement for the filing fee.

The Landlords filed an amendment dated July 16, 2020 seeking to change the amount sought to \$12,142.00.

The Tenant filed the application June 10, 2020 (the “Tenant’s Application”). The Tenant sought compensation for monetary loss or other money owed, return of the security deposit and reimbursement for the filing fee.

S.R. and S.B. appeared at the hearing for the Landlords. S.H. appeared at the hearing as a witness for the Landlords. S.H. was not involved in the conference call until required. The Tenant appeared at the hearing with A.T. to assist. The Tenant confirmed she was appearing for Tenant P.M. I explained the hearing process to the parties. All parties and S.H. provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence

and all oral testimony of the parties and witness. I will only refer to the evidence I find relevant in this decision.

#### Issues to be Decided

1. Are the Landlords entitled to recover unpaid rent?
2. Are the Landlords entitled to keep the security deposit?
3. Are the Landlords entitled to reimbursement for the filing fee?
4. Is the Tenant entitled to compensation for monetary loss or other money owed?
5. Is the Tenant entitled to return of the security deposit?
6. Is the Tenant entitled to reimbursement for the filing fee?

#### Background and Evidence

The Landlords sought the following compensation:

Item	Description	Amount
1	April rent	\$2,524.00
2	May rent	\$2,524.00
3	June rent	\$2,824.00
4	July rent	\$2,824.00
5	Liquidated damages	\$1,446.00
6	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$12,242.00</b>

The Tenant sought \$4,000.00 in compensation due to an inspection done by S.H. in February of 2020.

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started September 01, 2017 and was for a fixed term ending August 31, 2020. Rent was \$2,824.00 per month due on the first day of each month. The Tenants paid a \$1,378.00 security deposit. The agreement was signed for the Landlords and by the Tenants.

The agreement included an addendum with a liquidated damages clause at term 8. The Tenants signed the addendum and initialed the page of the addendum with term 8.

The parties agreed the Tenant vacated the rental unit May 31, 2020.

The parties agreed the Tenant provided the Landlords a forwarding address by email June 10, 2020.

S.B. testified that the Landlords did not have an outstanding monetary order against the Tenants at the end of the tenancy.

S.B. submitted that the Tenant agreed to the Landlords keeping the security deposit on the Condition Inspection Report (CIR).

The Tenant submitted that she did not agree to the Landlords keeping the security deposit on the CIR.

The CIR was submitted as evidence and both parties agreed it is accurate.

The Security Deposit Statement on the CIR seems to indicate the Tenant signed it agreeing to the Landlords deducting \$7,094.00 from the security deposit. I asked the Tenant about this. The Tenant acknowledged signing the Security Deposit Statement and testified as follows. She thought she had to sign the Security Deposit Statement but sent an email asking for her security deposit. She "wasn't aware of it". She didn't read the Security Deposit Statement clearly.

A.T. testified as follows. The Tenant and S.B. were speaking about the security deposit. S.B. said the Landlords were not deducting damage from the security deposit. The Tenant said she wanted the security deposit back. S.B. said the Landlords would hold the security deposit. The Tenant signed the Security Deposit Statement.

The parties agreed the Tenant received the CIR in person on move-in.

The move-out sections of the CIR are not completed. S.B. testified that the rental unit was in the same condition on move-out as it was on move-in. S.B. testified that both parties met and did the inspection but neither signed the CIR in the appropriate spot.

The Tenant agreed the parties met and did an inspection on move-out. The Tenant acknowledged receiving the CIR by email the day after the inspection.

## **LANDLORDS' APPLICATION**

### ***April and May Rent (Unpaid Rent)***

S.B. testified as follows.

The Tenant did not pay rent for April or May. The Tenant did not have authority to withhold rent for April or May.

The Landlords received \$600.00 towards April and May rent from BC Housing in June.

The Landlords also received \$300.00 from BC Housing for June rent but have not applied it to outstanding rent because they are not sure they are permitted to. The Landlords still hold this amount.

The Tenant testified as follows.

She agrees she did not pay April or May rent. She agrees she owes the Landlords April and May rent. She agrees \$600.00 should be deducted from the amount owing for April and May rent.

### ***June and July Rent (Loss of Rent)***

S.R. testified as follows.

The Tenant moved out and broke the lease. The Tenant's breach was ending the fixed term tenancy early. The Landlords received notice from the Tenant April 30, 2020 ending the tenancy for May 31, 2020.

The unit was listed for rent as soon as the Landlords received notice from the Tenant. It was listed on four different websites. The unit was originally listed for the same rent amount. The agents spoke to the Landlords every two weeks to try and lower rent to mitigate loss. The rent amount was lowered twice and was \$2,600.00 at the time of the hearing. The unit was still not re-rented at the time of the hearing.

The Landlords submitted the Tenant's notice ending the tenancy May 31, 2020. It is dated April 30, 2020.

The Tenant testified as follows.

She cannot afford to pay June and July rent and sent the Landlords an email about this. She lost her job and felt unsafe living at the rental unit. She did not provide the Landlords written notice of a breach of a material term of the tenancy agreement. She agrees she ended the fixed term tenancy early.

She does not know if the rental unit has remained empty. She was not told the Landlords lowered the rent. She does not know if the Landlords took the steps mentioned to mitigate their loss.

The Tenant subsequently testified that she agrees the rental unit is still empty.

### ***Liquidated Damages***

S.R. submitted that the Tenant ended the fixed term tenancy early and therefore term 8 of the addendum applies in relation to liquidated damages.

The Tenant testified as follows. She was not aware of term 8 of the addendum. She had never heard about liquidated damages before signing the tenancy agreement.

## **TENANT'S APPLICATION**

### ***\$4,000.00 Compensation***

The Tenant sought \$4,000.00 in compensation due to an inspection done by S.H.

The Tenant testified as follows.

On February 03, 2020, someone showed up at her door. This person did not say who she was. This person entered the rental unit, walked around and took photos. This person did not explain what she was doing. This person went through the rooms of the rental unit. This person did not explain why she was taking photos. The Tenant was confused. The Tenant was alone and felt vulnerable.

The Tenant called and complained to the agents for the Landlords about the inspection. The agents said they would talk to S.H. about it. She never heard anything further until she raised the issue again. This incident is the reason she decided to vacate the rental unit. She didn't feel safe at the rental unit.

The Tenant had submitted photos taken by S.H. who is the person who did the inspection for the Landlords. The Tenant submitted that her personal belongings are in the photos. The Tenant submitted that she does not know if more photos were taken and she thought there were more than what was provided.

The Tenant acknowledged this was an insurance inspection and the Landlords gave notice that they were going to come. However, the Tenant maintained that S.H. did not say anything to the Tenant at all during the entire inspection. The Tenant testified that S.H. was in the rental unit for less than 15 minutes.

The Tenant sought a \$1,000.00 rent reduction for the following four months she remained in the rental unit.

S.H. testified as follows. She inspected the rental unit February 03, 2020. Someone for the Landlords let the Tenant know she was coming and provided her name. She attended the rental unit, said hello to the Tenant and asked how things were working. She told the Tenant she would be a few minutes and would make sure everything was good. She checked the sink. She took a photo of a transition strip. She made sure there were no leaks in the bathroom. She took a photo of the caulking. She took a photo of the bed in the den because this was not allowed. She checked the bedroom closet to make sure there was no illegal activity occurring. She checked the fans. She did not do anything further. All of the photos taken have been submitted.

S.H. confirmed the photos taken were just for the Landlords' records. S.H. testified that she was in the rental unit for five minutes. S.H. testified that she did provide her name to the Tenant but did not tell the Tenant she was there for the Landlords.

The Tenant asked S.H. a question which I do not find relevant to outline here.

A.T. said the Tenant is concerned about her personal belongings being in the photos and believes more photos were taken.

S.B. testified as follows. The Tenant was sent an email about the inspection at the end of January. The Tenant was contacted about the inspection and responded. The Tenant was told it would take 15 minutes and S.H. would be doing the inspection. The agents do routine inspections. The Tenant was given a window of time for when the inspection would occur. The Tenant confirmed she would be home. S.H. emailed her the photos. No additional photos were sent to her. She spoke to the Tenant the following day and they discussed the photos and the reason for them.

In reply, the Tenant submitted that S.H. should have asked permission to take photos.

The Tenant submitted emails between the parties about the inspection.

The Tenant submitted correspondence with insurance companies about inspections.

### Analysis

Pursuant to rule 6.6 of the Rules of Procedure (the “Rules”), it is the applicant who has the onus to prove their claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

### ***Security Deposit***

Under sections 24 and 36 of the *Residential Tenancy Act* (the “*Act*”), landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the CIR and testimony of the parties, I am satisfied the Tenant participated in the move-in and move-out inspections and therefore did not extinguish her rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act*.

It is not necessary to decide whether the Landlords extinguished their rights in relation to the security deposit as extinguishment only relates to claims for damage to the rental unit and the Landlords have claimed for unpaid rent, loss of rent and liquidated damages.

Based on the testimony of the parties, I am satisfied the tenancy ended May 31, 2020.

Based on the testimony of the parties, I am satisfied the Tenant provided the Landlords a forwarding address by email June 10, 2020.

Pursuant to section 38(1) of the *Act*, the Landlords were required to repay the security deposit or claim against it within 15 days of the later of the end of the tenancy or receiving the Tenant’s forwarding address. Therefore, the Landlords had 15 days from June 10, 2020 to repay the security deposit or claim against it. The Landlords’

Application was filed May 13, 2020, prior to the end of the tenancy. The Landlords complied with section 38(1) of the *Act*.

Section 38(4) of the *Act* states:

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant...

Based on the Security Deposit Statement of the CIR, I find the Tenant agreed to the Landlords deducting \$7,094.00 from the security deposit for unpaid rent and liquidated damages. This is what the Security Deposit Statement says. The Tenant signed this May 31, 2020. The testimony of the Tenant in relation to the Security Deposit Statement does not change my finding. The Tenant is expected to have read the documents she signed. The Tenant is expected to have read the Security Deposit Statement of the CIR. The Tenant is not relieved of the obligations that flow from her signing the Security Deposit Statement of the CIR on the basis that she did not read it clearly or misunderstood it. If the Tenant misunderstood her rights and/or obligations, she should have sought assistance before signing the Security Deposit Statement of the CIR.

Pursuant to section 38(4) of the *Act*, the Landlords can keep the security deposit towards unpaid rent and liquidated damages.

### ***Compensation***

Section 7 of the *Act* states:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.



Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

## **LANDLORD'S APPLICATION**

### ***April and May Rent (Unpaid Rent)***

There is no issue that the Tenant owes the Landlords for unpaid rent for April and May as the Tenant acknowledged this. Therefore, the Landlords are entitled to the amount sought. Both parties agreed the Landlords received \$600.00 towards April and May rent. Therefore, the Landlords are awarded \$5,048.00 for April and May rent.

S.B. testified that the Landlords also received \$300.00 from BC Housing for June rent and sought a decision about whether the Landlords could keep this. I cannot determine this issue as it is not governed by the *Act*. The Landlords need to determine through BC Housing whether they are entitled to keep this amount.

### ***June and July Rent (Loss of Rent)***

There is no issue that this was a fixed term tenancy ending August 31, 2020.

Section 45 of the *Act* states:

(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.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

There is no issue the Tenant ended the fixed term tenancy May 31, 2020, prior to the end of the fixed term. This was a breach of section 45(2) of the *Act*.

Given the Tenant's testimony that she did not provide the Landlords written notice of a breach of a material term of the tenancy agreement, I find section 45(3) of the *Act* does not apply.

I am satisfied the Landlords lost rent for June and July due to the Tenant's breach. If the Tenant had not ended the fixed term tenancy early contrary to the *Act*, the Landlords would have received June and July rent.

I am satisfied the value of the loss was \$5,648.00 as this is two months of rent. I note that the Tenant agreed the unit was still empty as of the date of the hearing.

In relation to mitigation, the Landlords should have submitted documentary evidence to support the efforts they took to re-rent the unit. However, I find the Tenant did not really dispute these points and simply did not know whether the Landlords took the steps mentioned. I am satisfied the Landlords are entitled to loss of rent for June. I am not satisfied the Landlords are entitled to loss of rent for July. According to the agents for the Landlords, the unit was posted immediately after receiving notice from the Tenant April 30, 2020. When the rental unit did not re-rent in May or June, the Landlords should have taken further steps to mitigate the loss such as finding alternate ways to advertise, lowering the rent further or offering incentives to potential tenants. I do not find lowering the rent by \$224.00 sufficient given the amount of time the rental unit remained empty. Further, where a landlord is seeking two months of loss of rent when the tenant provided one month's notice, I would expect to see compelling documentary evidence showing the steps taken to mitigate the loss. No such compelling evidence was submitted here.

Given the above, the Landlords are awarded \$2,824.00 for loss of rent for June.

### ***Liquidated Damages***

Policy Guideline 4 addresses liquidated damages and states in part:

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.

The addendum includes a liquidated damages clause at term 8. The Tenants signed the addendum and initialed the page with term 8. The Tenants are bound by term 8. I do not accept that the Tenant was unaware of term 8 as it is in the addendum and the page is initialed. The Tenants were expected to read the tenancy agreement and addendum prior to signing it. The Tenant is not now relieved of the obligations in the tenancy agreement and addendum because she states she was unaware of the terms of these.

The liquidated damages clause states that it applies where the Tenants breach the fixed term tenancy. The Tenants did breach the fixed term tenancy by ending it early. Term 8 applies.

Term 8 states that the Tenants will pay the Landlords \$1,378.00 + \$68.00 (GST) for the cost of re-renting the unit. Based on the wording of term 8, I am satisfied it is a pre-estimate of the cost associated with re-renting the unit. I do not find the amount extravagant or oppressive considering the rent amount. In the circumstances, I am satisfied the Landlords are entitled to the amount sought.

## **TENANT'S APPLICATION**

### ***\$4,000.00 Compensation***

I am satisfied based on the emails submitted that the Tenant had notice of the inspection done February 03, 2020.

Based on the emails, I am satisfied the inspection was done for insurance purposes. I am not satisfied based on the emails from the Tenant that the inspection was not done for insurance purposes. I am not satisfied either the Tenant or other insurance companies would be aware of what the Landlords' insurance company required. Further, a landlord can inspect a rental unit monthly pursuant to section 29(2) of the *Act* if they wish. I am not satisfied the inspection itself was a breach of the *Act*.

The Tenant took issue with how the inspection was conducted. The Tenant and S.H. provided different testimony on how the inspection was conducted. I am not satisfied based on the evidence provided that the inspection occurred as claimed by the Tenant. I find it unlikely that S.H. showed up at the rental unit, barged past the Tenant and inspected the unit without saying one word to the Tenant the entire time. There would be no reason for S.H. to do this.

I accept that S.H. looked in closets and cabinets to check for leaks and illegal activity. S.H. was entitled to do so as part of an inspection of the rental unit.

I accept that S.H. took photos. I am not satisfied S.H. took more photos than those in evidence as there is insufficient evidence that she did. I have reviewed the photos. They are clearly taken to document the condition of the rental unit at the time of the inspection as they are of parts of the rental unit. The photos include minimal personal belongings of the Tenant. I am satisfied S.H. took the photos to keep on the Landlords'

own file as there is insufficient evidence before me that S.H. took the photos for some other purpose or did something else with the photos. I do not find the photo issue to be a breach of the Tenant's rights.

In the circumstances, I am not satisfied the Tenant has proven a breach. Further, even if I found the Landlords breached the Tenant's rights in relation to the inspection, I would not award the Tenant \$4,000.00 as I find this amount out of proportion to the breach alleged.

The Tenant's claim is dismissed without leave to re-apply.

### ***Filing fees***

Given the Landlords were partially successful, I award the Landlords reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Given the Tenant was not successful, I decline to award her reimbursement for the filing fee.

In summary, the Landlords are entitled to the following compensation.

Item	Description	Amount
1	April rent	\$2,524.00
2	May rent	\$2,524.00
3	June rent	\$2,824.00
4	July rent	-
5	Liquidated Damages	\$1,446.00
6	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$9,418.00</b>

The Landlords are entitled to \$9,418.00. The Landlords can keep the \$1,378.00 security deposit pursuant to section 72(2) of the *Act*. Pursuant to section 67 of the *Act*, the Landlords are issued a monetary order for the remaining \$8,040.00.

### **Conclusion**

The Landlords are entitled to \$9,418.00. The Landlords can keep the security deposit. The Landlords are issued a monetary order for the remaining \$8,040.00. This order must be served on the Tenants as soon as possible. If the Tenants do not comply with

the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The Tenant's Application is dismissed without leave to re-apply.

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: September 08, 2020

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Residential Tenancy Branch