



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY  
MANAGEMENT and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** MNDCL-S, MNDL-S, MNRL-S, FFL

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- and a monetary order for unpaid rent, and compensation for monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 pm. The landlord's agent, CL ("landlord"), attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord's agent and I were the only ones who had called into this teleconference.

The landlord testified that the tenants were served with the landlord's amended application for dispute resolution hearing package ('Application') and evidence on package on September 24, 2020 by way of registered mail. The landlord provided the tracking information in their evidentiary materials. In accordance with sections 88 and 89 of the *Act*, I find that the tenants deemed served with the landlord's application and evidence on September 29, 2020, 5 days after mailing. The tenants did not submit any written evidence for this hearing.

**Issue(s) to be Decided**

Is the landlord entitled to monetary compensation for money owed or losses?

Is the landlord entitled to recover the filing fee for this application from the tenants?

**Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on January 1, 2017. The tenancy was renewed on May 21, 2020 for a fixed term from February 1, 2020 through to January 31, 2021. Monthly rent was set at \$2,550.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$1,250.00, which they still hold. The landlord testified that the tenants moved out before the end of the fixed term tenancy on September 1, 2020. The landlord testified that they were able to find a new tenant for October 1, 2020.

The landlord provided the following list of damages and losses for their monetary claim.

| <b>Item</b>                            | <b>Amount</b>      |
|--|--------------------|
| Unpaid/Loss of Rent for September 2020 | \$2,550.00         |
| Liquidated Damages                     | 1,275.00           |
| NSF/Late Fees                          | 50.00              |
| Unpaid Utilities                       | 6,794.46           |
| Carpet Cleaning                        | 252.00             |
| Repairs & Rubbish Removal              | 408.35             |
| Cleaning                               | 335.00             |
| Filing Fee                             | 100.00             |
| <b>Total Monetary Order Requested</b>  | <b>\$11,764.81</b> |

The landlord is requesting a monetary order for unpaid rent for September 2020. The landlord provided the tenant ledger which shows that \$2,550.00 in rent was applied, but returned as insufficient funds. An NSF fee of \$25.00 and a late fee of \$25.00 was applied. The landlord is also requesting a liquidated damages fee in the amount of \$1,275.00 as set out in the tenancy agreement which is “an agreed pre-estimate of the

Landlord's administrative costs of advertising and re-renting the Premises as a result of the Early Termination."

The landlord is also seeking a monetary order for the unpaid utilities. The landlord submitted copies of the invoices and tenant ledger in support of this claim.

The landlord testified that the tenants failed to leave the home in reasonably clean and undamaged condition. The landlord provided a copy of the move-in and move-out inspection reports and invoices associated with these losses for their claim.

### **Analysis**

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

**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 the tenants did not end the tenancy in a manner that complies with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenants obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. No application for dispute resolution have been filed by the tenants. The tenants moved out earlier than the date specified in the tenancy agreement. I find that the landlord made an effort to mitigate the tenants' exposure to the landlord's monetary losses as is required by section 7(2) of the *Act*, and were able to find new tenants for October 1, 2020. I, therefore, allow the landlord's monetary claim or loss of rental income for the month of September 2020 in the amount of \$2,550.00.

I must now consider whether the landlord is entitled to the \$1,275.00 in liquidated damages.

Residential Tenancy Branch Policy Guideline #4 with respect to Liquidated Damages includes the following guidance with respect to the interpretation of such clauses:

*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...*

I have reviewed the written tenancy agreement submitted by the landlord. I am satisfied that the landlord had clearly stipulated on the tenancy agreement that the tenants would be responsible for the amount claimed by the landlord as liquidated damages. I am satisfied that the amount to be a genuine and reasonable pre-estimate of the losses associated with locating a new tenant in the event of an early termination of the fixed-term tenancy. Accordingly, I allow this portion of the landlord's monetary claim.

I find that the landlord provided sufficient evidence to support that the tenants have failed to pay the outstanding \$6,794.46 in utilities. Accordingly, I allow this portion of the landlord's monetary claim.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I find that the landlord provided sufficient evidence to show that the

tenants did not take reasonable care and attention when vacating the home. I find that the landlord provided detailed evidence to support the losses claimed, including a copy of the move-in and move-out inspection reports as well as invoices for the losses claimed. Accordingly, I find the landlord is entitled to compensation for these damages.

The landlord continues to hold the tenants' security deposit of \$1,250.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit of \$1,250.00 in partial satisfaction of the monetary claim.

As the landlord was successful in their application, I am allowing the landlord to recovery the filing fee from the tenant.

### **Conclusion**

I issue a Monetary Order in the amount of \$10,514.81 in the landlord's favour under the following terms which allows a monetary award for money owed, as well as the losses associated with the tenants' failure to comply with the *Act*.

| <b>Item</b>                            | <b>Amount</b>      |
|--|--------------------|
| Unpaid/Loss of Rent for September 2020 | \$2,550.00         |
| Liquidated Damages                     | 1,275.00           |
| NSF/Late Fees                          | 50.00              |
| Unpaid Utilities                       | 6,794.46           |
| Carpet Cleaning                        | 252.00             |
| Repairs & Rubbish Removal              | 408.35             |
| Cleaning                               | 335.00             |
| Filing Fee                             | 100.00             |
| Less Security Deposit Held             | -1,250.00          |
| <b>Total Monetary Order</b>            | <b>\$10,514.81</b> |

The landlord is provided with this Order in the above terms and the tenants must be served with a copy of this Order as soon as possible. Should the tenants 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: January 11, 2021