



# 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:** FFL MNDL-S MNRL-S

### **Introduction**

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

- and a monetary order for money owed or compensation for damage or loss 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

While the landlord's agent, TV ("landlord"), attended the hearing by way of conference call, the tenants did not. I waited until 1:44 p.m. to enable the tenant to participate in this scheduled hearing for 1:30 p.m. The landlord was given a full opportunity to be heard, to present affirmed 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 and I were the only one who had called into this teleconference.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package on by way of registered mail on October 22, 2020, while the amendment package was sent by registered mail on January 28, 2021 to the forwarding address provided by the tenant. The landlord provided Canada Post tracking numbers in their evidentiary materials, and in the hearing. In accordance with sections 88, 89 and 90 of the Act, I find that the tenant were deemed served with the landlord's application package, amendment, and evidence 5 days after mailing.

### **Issue(s) to be Decided**

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

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

### **Background and Evidence**

The landlord provided the following undisputed evidence. This fixed-term tenancy began on August 1, 2020, and was to end on July 31, 2021. Monthly rent was set at \$1,425.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$712.50, which they still hold. The landlord testified that the tenant moved out on October 1, 2020 after notifying the landlord by email on September 16, 2020 that they had a family emergency, and can be out by the end of the month. The landlord submitted a copy of this email in their evidentiary materials.

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

| <b>Item</b>                           | <b>Amount</b>     |
|---------------------------------------|-------------------|
| Unpaid Rent – October 1, 2020         | \$45.97           |
| Liquidated Damages                    | 712.50            |
| NSF/Late Fees                         | 50.00             |
| Unpaid Strata Fines                   | 200.00            |
| Filing Fee                            | 100.00            |
| <b>Total Monetary Order Requested</b> | <b>\$1,108.47</b> |

The landlord testified that the tenant did not vacate the rental unit until October 1, 2020, and did not pay any rent for October 2020. The landlord is seeking the pro-rated rent for October 2020. Although the landlord's application notes a monetary claim of \$91.95 in their monetary order worksheet, the agent confirmed in the hearing that the landlord was only seeking the pro-rated rent for October 1, 2020.

The landlord is also seeking a monetary order for liquidated damages as set out in the tenancy agreement for ending the tenancy before the end of the fixed term tenancy agreement. The landlord included a copy of the agreement in their evidentiary materials which states: "LIQUIDATED DAMAGES: If the Tenant ends or gives notice to end tenancy before the end of the original Term of this Agreement, or any subsequent fixed term, or if the Tenant is in breach of the Residential Tenancy Act or a material term of this Tenancy Agreement that causes the Landlord to end the tenancy before the end of the original Term or subsequent fixed term ("Early Termination" ), then the Tenant must pay the sum of **\$712.50** to the Landlord as liquidated damages and not as a penalty ("Liquidated Damages" ). The Liquidated Damages 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. Payment of Liquidated Damages does not preclude the Landlord from exercising

any further right to recovering other damages from the Tenant.”

The landlord is also seeking reimbursement of the late and NSF fees, as well as the outstanding strata fines assessed against the unit for bylaw infractions incurred by the tenant. The landlord included a copy of the bylaw infraction letters and ledger in support of their claim.

### **Analysis**

Section 44 of the *Residential Tenancy Act* reads in part as follows:

**44** (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...

*(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;*

(c) the landlord and tenant agree in writing to end the tenancy;...

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 tenant had moved out prior to the end of this fixed term tenancy, in a manner that does not comply with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenant obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. No applications for dispute resolution have been filed by the tenant in regards to this tenancy.

I must now consider whether the landlord is entitled to the \$712.50 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 tenant 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.

**Section 26** of the Act, in part, states as follows:

### **Rules about payment and non-payment of rent**

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find that the landlord provided sufficient evidence to support that the tenant did not move out until October 1, 2020, and did not pay rent for the additional day in October 2020. Accordingly, I allow the landlord's monetary claim for pro-rated rent for October 1, 2020.

I am also satisfied that the landlord provided sufficient evidence to support that the tenant has not reimbursed the landlord for the outstanding NSF and late fees, or the strata fines for the bylaw infractions imposed for the tenant's contravention of strata bylaws. Accordingly, I allow these portions of the landlord's monetary claim.

The landlord continues to hold the tenant's security deposit of \$712.50. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit 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 \$395.97 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 tenant's failure to comply with the *Act* and tenancy agreement.

| <b>Item</b>                   | <b>Amount</b>   |
|-------------------------------|-----------------|
| Unpaid Rent – October 1, 2020 | \$45.97         |
| Liquidated Damages            | 712.50          |
| NSF/Late Fees                 | 50.00           |
| Unpaid Strata Fines           | 200.00          |
| Filing Fee                    | 100.00          |
| Less Security deposit Held    | -712.50         |
| <b>Total Monetary Order</b>   | <b>\$395.97</b> |

The landlord is provided with this Order in the above terms and the tenant must be served with a copy of this Order as soon as possible. Should the tenant 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: February 24, 2021

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Residential Tenancy Branch