



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CENTURION PROPERTY ASSOCIATES  
INC and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the *Residential Tenancy Act* (the “Act”) for a monetary order for losses, permission to retain the security deposit, and to recover the cost of the filing fee for this application.

The Landlord’s Counsel, a clerk, and two Property Managers (the “Landlord”), and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter is described in this Decision.

### Issues to be Decided

- Is the Landlord entitled to monetary compensation for damages under the *Act*?
- Is the Landlord entitled to the return for their filing fee for this application?

### Background and Evidence

Both parties agreed they signed a fixed term tenancy that began on August 15, 2019. Both parties agreed that there had been a typo on the tenancy agreement in section 4B and that the actual agreed date for the end of the fixed term had been July 31, 2020.

Rent in the amount of \$1,975.00 was payable on the first of each month, and the Tenant paid a security deposit of \$987.50 at the outset of the tenancy. The Landlord provided a copy of the tenancy agreement into documentary evidence.

Both parties agreed that the Tenant ended their tenancy early when they gave notice, on May 20, 2020, to end the tenancy as of June 30, 2020, one month early. The Tenant vacated the rental unit on June 30, 2020, and both parties agreed that the move-out inspection had been conducted, that the rental unit had been returned to the Landlord and that the security deposit had been dealt with in accordance with the *Act*.

The Landlord testified that they are claiming for liquidated damages in the amount of \$500.00 as contracted to in section 5 of the tenancy agreement.

The Tenant testified that they knew about the liquidated damages clause on their tenancy agreement and that they had been advised by the Landlord that this clause would be enforced as they were ending their tenancy early. However, the tenant testified that they disagreed with the Landlord regarding the liquidated damages clause for this tenancy as they did not believe that the \$500.00 was not a true estimation of what it costs to re-rent the unit, and therefore should be permitted under the *Act*. The Tenant stated that they agree they did end his tenancy early but that they felt that there was no real loss to the Landlord as they had a new renter to take the unit for July 1, 2020.

The landlord stated that the \$500.00 liquidated damages clause contained in the tenancy agreement was a true representation of their actual costs to secure a new renter for the unit and that the \$500.00 represents advertising cost, security screening and employee wages.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the parties entered into an 11-month and 17-day fixed term tenancy, beginning on August 15, 2019, in accordance with the *Act*.

Section 45(2)(b) of the *Act* states that a tenant cannot end a tenancy agreement earlier than the date specified in the tenancy agreement.

***Tenant's notice***

***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 have reviewed the tenancy agreement and the testimony offered by these parties, and I find that this tenancy could not have ended in accordance with the Act until July 31, 2020.

Accordingly, I find that the Tenant failed to comply with the Act when they issued notice to the Landlord to end his tenancy as of June 30, 2020.

In this case, the Landlord is seeking to enforce section 5 of their tenancy agreement, requesting a \$500.00 award in liquidated damages, as contracted between these parties. The Residential Tenancy Policy Guideline # 4 speaks to liquidated damages. It states:

“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.

A clause which provides for the automatic forfeiture of the security deposit in the event of a breach will be held to be a penalty clause and not liquidated damages unless it can be shown that it is a genuine pre-estimate of loss.

If a liquidated damages clause is struck down as being a penalty clause, it will still act as an upper limit on the amount that can be claimed for the damages it was intended to cover.”

I accept the Landlord’s testimony, and I find the sum of the liquidated damages in the tenancy agreement to be a fair representation of the genuine loss testified to by the Landlord, following the Tenant’s breach of this tenancy agreement. Therefore, I find that the Landlord has established an entitlement to a monetary award in the amount of \$500.00 in liquidated damages.

Additionally, section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been partially successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I find for the Landlord pursuant to sections 67 and 72 of the Act.

I grant the Landlord a **Monetary Order** in the amount of **\$600.00**. The Landlords are provided with this Order in the above terms, and the Tenant must be served with 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 19, 2021

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Residential Tenancy Branch