



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ApartmentsRUs Property Management  
Ltd and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      MNDCL-S, FFL

### **Introduction**

The landlord filed an Application for Dispute Resolution on February 2, 2021 seeking compensation for monetary loss or other money owed. Additionally, they applied for the cost of the hearing filing fee.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. Each party confirmed they received the prepared documentary evidence of the other in advance of the hearing. On this basis, the hearing proceeded.

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

Is the landlord entitled to compensation for unpaid rent, and/or other money owed, pursuant to s. 67 of the *Act*?

Is the landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

### **Background and Evidence**

The landlord submitted a copy of the Residential Tenancy Agreement that both parties signed on December 21, 2020. The agreement is clear that the period of the tenancy was fixed, starting on January 1, 2021 and ending on December 31, 2021. It is specified that at the end of the term, the tenancy may continue on a month-to-month basis. The rent amount was \$1,395. The tenant paid a security deposit of \$697.50 and a pet damage deposit of \$697.50 on December 22, 2020.

Two pages of additional terms accompanied the agreement. One clause, initialled by both tenant and landlord, specifies:

The tenant is hereby responsible for paying the rent until the end of the lease. If the tenant wishes to break the lease, the landlord agrees to make his best effort to re-rent the premises, provided that the tenant agrees to pay liquidated damages of \$500 that shall be paid by the tenant to the landlord as liquidated damages, and not as a penalty to cover the administration costs of re-renting the rental unit.

The clause immediately following, also initialled, specifies:

Tenants are required to give one month's written notice no later than the first month before they vacate the premises. If a tenant does not give one month's notice in writing the landlord agrees to make his best effort to re-rent the premises provided that the tenant agrees to pay liquidated damages of \$500 that shall be paid by the tenant to the landlord as liquidated damages, and not as a penalty to cover the administration costs of re-renting the unit.

On January 13, 2021 the tenant advised the landlord: "I am moving out asap due to my health. I am becoming sick in this building which is unfit for my compromise immune system." The tenant cited issues of the cleanliness of the unit upon their move in, as well as "major water damage" leading to mould. Additionally, there were other damages noted, with select items being "a major health issue." The tenant stated: "It [sic] will be out at the end of the Jan 15, 16 or 17, 2021 or the end of January 2021."

The landlord responded to this the following day to say: "You signed a lease which was explained to you clearly after you said you did not want a lease, you did not have to enter into this legal agreement."

On January 15, 2021 the landlord informed the tenant that these addendum numbers 1 and 2 apply; this is because the tenant is breaking the lease with less than the required notice to end the tenancy.

The tenancy ended on January 31, 2021. The landlord scheduled a move-out inspection with the tenant for this date. In their evidence, the landlord provided a copy of the condition inspection report, unsigned by either party. This shows the deductions for the \$697.50 security deposit and \$302.50 for the pet damage deposit; however, the tenant did not sign the space provided.

In the hearing, the tenant presented that they had issues with the state of repair of the rental unit from the beginning. They listed repairs needed to the landlord. Because of

the threat posed by mould, they were getting sicker, and by the 13<sup>th</sup> of January it was at the point where the tenant was going to be hospitalized because of mould. They went to the hospital on the 16<sup>th</sup> and the hospital staff recommended that the tenant “not go back to the rental unit.”

In regard to the Addendum containing the two clauses at issue here, the tenant provided a passage from their email to the landlord dated December 21, 2020 wherein they asked for clarification on “that [sic] the liquidation damages is.” In a different messages responding to other of the tenant’s queries, the landlord reiterated their version of events when the tenant had initial questions on specific pieces of the agreement, yet went ahead and signed on December 21, prior to their move to the rental unit.

The landlord makes their claim for \$1,000 in pursuit of both these liquidated damages clauses combined. In the hearing, they pointed out they have no discretion on when not to apply these clauses that the tenant initialled to with their agreement.

## **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 s. 7 and s. 67 of the *Act*.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

The *Act* s. 6(3) provides that: “A term of a tenancy agreement is not enforceable if . . . (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.”

The Residential Tenancy Branch has a set of *Residential Tenancy Policy Guidelines*. These are in place to provide a statement of the policy intent of the *Act*. On Liquidated Damages, Policy Guideline 4 provides: “The amount [of damages payable] 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.”

I find a framework for either of the two clauses – as set out above – is not in place. The clause appears arbitrary and is not a genuine pre-estimate of loss. That is to say, the costs of each of advertising, interviewing, administration and re-renting are not established.

In sum, I find the liquidated damages clauses are invalid in that they are punitive in nature. In line with the four points set out above, I find the true value of a loss involving re-renting the unit is not established, and these arbitrary \$500 amounts are not an effort at mitigating any monetary loss resulting from an early end of tenancy.

Further, the wording of the clause shows that the landlord’s effort at re-renting the unit *is contingent on* the tenant’s payment of the amount set out. This is not in line with the principle of mitigation and runs counter to it.

For these reasons, I make no award for the amount claimed by the landlord here. I dismiss the landlord’s Application without leave to reapply.

The landlord shall return the full amount of the held security deposit and pet damage deposit to the tenant. The landlord followed the provisions of s. 38(1); however, they failed in their claim against this withheld amount. For this reason, I grant a monetary order to the tenant for the amount of the deposits combined. Though the landlord provided one-half the pet damage deposit amount on the move-out Condition Inspection Report, I find the true amount of that particular deposit is \$697.50 as provided on the tenancy agreement.

As the landlord was not successful in their Application, I find they are not entitled to recover the Application filing fee.

### **Conclusion**

Pursuant to s. 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$1,395 for compensation set out above. The tenant is provided with this Order in the above terms and must serve it to the landlord as soon as possible. Should the landlord fail to comply with this Order, the tenant may file it in the Small Claims Division of the Provincial Court where it may be 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 s. 9.1(1) of the *Act*.

Dated: June 14, 2021

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Residential Tenancy Branch