



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **MNDCL-S, FFL**

### **Introduction**

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

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the security deposit pursuant to section 38; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent (the "landlord").

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The tenant testified that they received the landlord's materials and had not served any materials of their own. Based on their testimonies I find the tenants duly served in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed? Is the landlord entitled to retain the security deposit for this tenancy? Is the landlord entitled to recover their filing fee from the tenants?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This fixed-term tenancy began on October 15, 2020. The monthly rent was \$2,190.00 payable on the 15<sup>th</sup> of each month. A security deposit of \$1,095.00 was collected at the start of the tenancy and is still held by the landlord.

The signed tenancy agreement provides that the tenancy is for a fixed term ending on October 14, 2021. The addendum to the tenancy agreement, signed by the parties, provides that if the tenants end the tenancy prior to its full term, the tenants will pay a sum of half of one month's rent as liquidated damages. These damages being an estimate of the cost of the landlord re-renting the rental unit.

The parties agree that the tenancy ended on July 31, 2021 prior to its full term. The tenants submit that the tenancy ended by mutual agreement with the landlord, and they should not be held accountable to pay the liquated damages. The landlord testified that while there were attempts to negotiate to reduce the amount of the liquidated damage payable the parties did not have an agreement to end the fixed term early and waive all liquidated damages.

### Analysis

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing.

In the present case this tenancy ended on July 31, 2021 and the landlord filed their application for dispute resolution on August 12, 2021. As such, I find that the landlord

was within the timeline allowed under the Act to file their application for authorization to retain the security deposit.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

In the present circumstance, I am satisfied with the testimony of the landlord supported in the documentary materials that this was a fixed-term tenancy with a liquidated damage clause for instances when the tenancy was ended prior to its full term.

As outlined in Residential Tenancy Policy Guideline 4, a liquidated damage clause is an agreement in advance for the payment of a genuine pre-estimate of losses in the event of a breach of the tenancy agreement.

I find that the amount of the damage, the circumstances in which the amount becomes payable and the landlord's explanation of how the amount was pre-estimated to be sufficient to establish that this is a true liquidated damage clause and not a penalty clause.

I accept the evidence of the landlord that the tenants unilaterally ended the fixed-term tenancy prior to its full term. While it is evident that the landlord took reasonable steps to mitigate their losses, I do not find these attempts by the landlord as tantamount to an agreement to allow the tenants to end the fixed term tenancy. I find the tenant's testimony to not be supported in any documentary materials and have be of little probative value. Based on the totality of the evidence I find that the tenants ended this fixed term tenancy without authorization on the part of the landlord.

Residential Tenancy Policy Guideline 4 provides that:

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.

Accordingly, I find it unnecessary to consider the actual costs incurred by the landlord due to the early end of the tenancy agreement. I find that the clause in the tenancy agreement signed by the parties to be a valid and enforceable liquidated damage clause. I accept the evidence of the parties that the tenant ended the tenancy before the full term and as a result are obligated to pay the amount of \$1,095.00, the equivalent of half a month's rent as liquidated damages.

As the landlord was successful in their application, they are entitled to recover their filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$100.00 and allow the landlord to retain the full security deposit of \$1,095.00 for this tenancy. The tenants must be served with 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: February 25, 2022

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Residential Tenancy Branch