



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL-S, FFL

### Introduction

On October 30, 2021, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”), seeking to apply the security deposit towards this debt pursuant to Section 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

L.D. attended the hearing as an agent for the Landlord; however, neither Tenant attended the hearing at any point during the 17-minute teleconference. At the outset of the hearing, I informed L.D. that recording of the hearing was prohibited. She provided a solemn affirmation.

She advised that each Tenant was served the Notice of Hearing and evidence package on November 5, 2021, by registered mail (the registered mail tracking numbers are noted on the first page of this Decision). She referenced the submitted tracking histories which indicated that these packages were delivered and signed for on November 10, 2021. Based on this undisputed evidence, I am satisfied that the Tenants were duly served the Landlord’s Notice of Hearing and evidence packages. As such, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards these debts?

- Is the Landlord entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

L.D. advised that the tenancy started on July 1, 2021, as a fixed term tenancy of one year; however, the Tenants gave up vacant possession of the rental unit on October 16, 2021. Rent was established at \$3,200.00 per month and was due on the first day of each month. A security deposit of \$1,600.00 and a pet damage deposit of \$1,600.00 were also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

She submitted that the Tenants provided their forwarding address in writing on the move-out inspection report, dated October 16, 2021. As well, it is her position that the Tenants authorized the Landlord, in writing on this report, to keep the security deposit and pet damage deposit to apply towards October 2021 rent that was not paid.

She advised that the Landlord is seeking compensation in the amount of **\$1,720.00** for the cost of liquidated damages because the Tenants ended the fixed term tenancy early. She referenced clause six in the tenancy agreement, which outlined that liquidated damages would be charged if the Tenants ended the fixed term tenancy early. While the liquidated damages clause indicated that \$1,800.00 would be owed, she stated that the time, effort, and costs related to their efforts in re-renting the rental unit totalled less than that.

In addition, she advised that the Landlord is seeking compensation in the amount of **\$25.00** for the cost of an NSF fee because the Tenants put a stop payment on October 2021 rent. She referenced clause 13 of the tenancy agreement which permits this amount being charged.

### Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38 of the *Act* outlines how the Landlord must deal with the security deposit at the end of the tenancy. As the Tenants provided written consent for the Landlord to

apply the security deposit and pet damage deposit towards October 2021 rent, I am satisfied that the deposits have been applied in compliance with the *Act*.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlord's claim for liquidated damages, there is no dispute that the parties entered into a fixed term tenancy agreement from July 1, 2021, ending June 30, 2022, yet the tenancy effectively ended when Tenants gave up vacant possession of the rental unit on October 16, 2021. Sections 44 and 45 of the *Act* set out how tenancies end, and the Tenants' notice cannot be effective earlier than the date specified in the tenancy agreement as the end of the tenancy. As well, the undisputed evidence is that there was a liquidated damages clause in the tenancy agreement.

I find it important to note that Policy Guideline # 4 states that 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" and that the "amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into". This guideline also sets out the following tests to determine if this clause is a penalty or a liquidated damages clause:

- 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.

When reviewing the totality of the evidence before me, I am satisfied that there was a liquidated damages clause in the tenancy agreement that both parties had agreed to. Moreover, based on the undisputed and solemnly affirmed testimony before me, I am satisfied that the Landlord mitigated their loss and re-rented the premises as quickly as possible. Furthermore, I am satisfied that the amount of liquidated damages is a genuine pre-estimate of loss to re-rent the rental unit. As such, I grant the Landlord a monetary award in the amount of **\$1,720.00** to satisfy this claim.

With respect to the Landlord's claim for compensation in the amount of \$25.00 for the cost of an NSF fee, based on the undisputed and solemnly affirmed testimony before me, I grant the Landlord a monetary award in the amount of **\$25.00** to rectify this matter.

As the Landlord was successful in these claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Tenants to the Landlord**

Liquidated damages	\$1,720.00
NSF fee	\$25.00
Recovery of filing fee	\$100.00
<b>TOTAL MONETARY AWARD</b>	<b>\$1,845.00</b>

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$1,845.00** in the above terms, and 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: May 24, 2022

---

Residential Tenancy Branch