



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNDCL-S, FFL**

### Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution (“Application”) filed by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”). The Landlord applied for the following:

- a Monetary Order for compensation for monetary loss or other money owed pursuant to section 67;
- authorization to keep the Tenants’ security and/or pet damage deposit(s) under section 38; and
- authorization to recover the filing fee of the Application from the Tenants.

The three Tenants did not attend this hearing. I left the teleconference hearing connection open until 1:45 pm in order to enable the Tenants to call into this teleconference hearing scheduled for 1:30 pm. An agent (“CH”) for Landlord attended the hearing and 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 Dispute Resolution Proceeding (“NDRP”). I also confirmed from the teleconference system that CH and I were the only ones who had called into this teleconference.

CH stated the Landlord served each of the three Tenants with the NDRP and the Landlord’s evidence (“NDRP Package”) on the Tenants by registered mail on October 8, 2022 to the address the Tenants provided in their notice to end the tenancy dated September 30, 2021. CH provided the Canada Post tracking numbers for service of the NDRP Package on each of the three Tenants to corroborate her testimony. I find the

NDRP Package was served on each of the Tenants pursuant to section 89 and 90 of the Act.

CH stated the Tenants did not serve any evidence on the Landlord for this hearing.

### Issues to be Decided

Is the Landlord entitled to:

- a monetary award for damage arising out of this tenancy?
- retain all or a portion of the Tenants' security deposit in partial satisfaction of the monetary award requested?
- recovery of his filing fee for the Application?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

CH submitted a copy of the tenancy agreement, together with the addendum thereto, between the Landlord and the Tenants. CH stated the tenancy commenced on March 1, 2021, for a fixed ending on February 28, 2022, with rent of \$1,600.00 payable on the 1<sup>st</sup> day of each month. The Tenants were to pay a security deposit of \$800.00. CH stated the Tenants paid the security deposit and the Landlord was holding it in trust for the Tenants.

CH testified the Tenants served the Landlord with a written notice to end tenancy dated September 30, 2021. CH submitted a copy of the Tenants' written notice to end tenancy. CH stated the Tenants vacated the rental unit on September 21, 2021. CH submitted a copy of the signed move-in and move-out inspection reports. CH stated the Tenants and Landlord performed a move-in inspection report on February 9, 2020 and move-out inspection report for September 21, 2021.

CH stated the Tenants vacated the rental unit on September 21, 2021, prior to the end of fixed term of the tenancy agreement. CH testified paragraph 4 of the tenancy agreement states:

4. RENTAL PERIOD & TERMS OF TENANCY. The tenancy created by this agreement COMMENCES on 1<sup>st</sup> day of March of 2021. And continues on A. NOT LESS THAN 6 MONTHS or B.[X] not less than 12 MONTHS (please check appropriate box) basis until cancelled in accordance with the Act. However, if the Tenant terminates the tenancy in less than 12 months, \$500 + RENT CONCESSIONS (if any) will be charged by the Landlord and the Tenant will pay this amount as a service charge for tenancy change over costs, such as advertising, interviewing, administration, re-renting, for this short-term tenancy. This is not a penalty. In the event the Tenant(s) take possession of the premises before the commencement date of this lease agreement, the Tenant(s) will pay the Landlord a per-diem rate, based on the market rent covering the period of use to the Lease commencement date. The Tenant(s) also agrees to follow all rules and conditions in the Lease Agreement during this period.

CH stated the Landlord wanted to recover the \$500.00 break fee from the Tenants as a result of the Tenants ending the tenancy prior to the end of the fixed term, being February 28, 2022.

### Analysis

Rule 6.6 Residential Tenancy Branch Rules of Procedure ("RoP") states:

#### **6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Based on Rule 6.6, the onus to prove his case, on a balance of probabilities, is on the Landlord.

Sections 7 and 67 of the Act state:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.
- 67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

*Residential Tenancy Policy Guideline 4* ("PG 4") deals with situations where a party seeks to enforce a clause in a tenancy agreement providing for the payment of liquidated damages. PG 4 states in part:

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.

The undisputed testimony of CH was the Tenants vacated the rental unit on September 21, 2021, prior to the end of the fixed term of February 28, 2022. The Landlord submitted signed copies of the tenancy agreement, signed move-in and move-out inspection reports and a copy of the signed Tenants' notice to end tenancy.

I find the Tenants agreed to pay the liquidated damage fee of \$500.00 pursuant to the terms of paragraph 4 of the tenancy agreement. I find the \$500.00 to be a genuine pre-estimate of the loss of the Tenants ending the tenancy before the end of the fixed term.

As such, I find the Landlord is entitled to its claim in the amount of \$500.00. Pursuant to section 67 of the Act, I order the Tenants pay \$500.00 to the Landlord pursuant to the terms of the tenancy agreement. Pursuant to section 72(2) of the Act, the Landlord may retain \$500.00 from the security and pet damage deposits of \$800.00 in satisfaction of the Monetary Order.

As the Landlord has been successful in the Application, pursuant to section 72 of the Act, I award the Landlord \$100.00 for the filing fee of the Application. Pursuant to section 72(2) of the Act, I order that the Landlord may retain \$100.00 from the security deposit of \$800.00 to recover the filing fee of the Application.

### Conclusion

I order the Tenants to pay \$500.00 to the Landlord for compensation.

I order the Tenants to pay \$100.00 to the Landlord for the filing fee of the Application.

I order the Landlord retain \$600.00 from the security and pet damage deposits in satisfaction of the Monetary Orders made above.

The Landlord is ordered to pay the Tenants, **within 15 days of receipt of this decision**, the sum of **\$200.00** calculated as follows:

Description	Amount
Compensation awarded to Landlord	\$500.00
Recovery of Filing Fee of Application	\$100.00
Less Tenant's Security Deposit	-\$800.00
<b>Total</b>	<b>-\$200.00</b>

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 13, 2022

---

Residential Tenancy Branch