



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNDCL - S, FF

### **Introduction**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act*, for a monetary order for unpaid utilities, late fees, for liquidated damages and for the recovery of the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of the claim.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties agreed that they had received each other's evidence in a timely manner.

### **Issues to be decided**

Is the landlord entitled to a monetary order for unpaid utilities, late fees, for liquidated damages, and for the recovery of the filing fee?

### **Background and Evidence**

The tenancy started on October 01, 2021, for a fixed term ending on September 30, 2022. The monthly rent was \$2,750.00 payable on the first of each month and did not include utilities. Prior to moving in the tenant paid a security deposit of \$1,375.00.

An addendum to the tenancy agreement contains terms that require the tenant to pay a fee of \$25.00 for late rent and liquidated damages in the amount of one-half month's rent, in the event that the tenant ends the tenancy prior to the end date of the fixed term.

The parties agreed that on February 26, 2022, the tenant provided the landlord with a 30-day notice to end tenancy effective March 28, 2022. The tenant acknowledged that he was aware that he was providing notice to end the tenancy prior to the end date of the fixed term (September 30, 2022).

On March 01, 2022, the tenant paid partial rent for March and owed a balance of \$1,375.00.

On March 02, 2022, the landlord served the tenant with a 10-day notice to end tenancy with an effective date of March 11, 2022. The parties came to an agreement that allowed the landlord to retain the security deposit to cover the remainder of rent for March.

The landlord has applied for liquidated damages in the amount of \$1,375.00. The tenant, AM, testified that he objected to the landlord's claim because the landlord had served him with a notice to end tenancy prior to the end of the fixed term. I reminded the tenant that on February 26, 2022, he had served the landlord with a 30 day notice to end tenancy.

The tenant also added that, on March 01, 2022, he returned to the rental unit to find that two strangers had moved in without any notification from the landlord. The matter was discussed, and the landlord testified that he did not have a rental agreement with these two individuals and that they were friends of the tenant DG. DG admitted that she granted the strangers permission to move into the rental unit.

The landlord stated that the tenant owed for utilities and filed copies of the utility bills. At first the tenant stated that the landlord had increased the outstanding amount but later agreed to pay after the landlord explained that the final bill got delivered after the tenancy had ended.

The landlord is claiming the following:

1.	Utilities	\$508.78
2.	Late fee	\$25.00
3.	Liquidated damages	\$1,375.00
4.	Filing fee	\$100.00
	Total	<b>\$2,008.78</b>

### **Analysis**

Based on the testimony of both parties, I find that tenants agreed to the entire claim of the landlord except for the claim of liquidated damages.

A copy of the addendum to the tenancy agreement filed into evidence contains a clause regarding liquidated damages that states:

*Early termination is defined as ending the lease prior to the term dated on the RTB-1. Any request must be made in with a minimum of 1 clear calendar month. If early termination is requested, the tenant agrees to pay a fee of 50% of 1 months rent to cover costs associated with advertising the property and damage finding a new tenant. This fee cannot be paid from the or pet deposits, is non-refundable, and must be paid prior to making an official request to end tenancy early.*

Section 4 of the *Residential Tenancy Policy Guideline* deals with situations where a party seeks to enforce a clause in a tenancy agreement providing for the payment of liquidated damages.

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance to 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.

Pursuant to section 4 of the *Residential Tenancy Policy Guideline*, a sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach. In this case, I find the sum of \$1,375.00 to be reasonable when compared to what it would cost the landlord to re rent the unit.

The landlord invoked the liquidated damage clause in the tenancy agreement and elected to claim the liquidated damage amount in the amount of \$1,375.00. In the tenancy agreement the landlord records the amount of the liquidated damages to be paid in the event the tenant ends the tenancy prior to the end date, as a total of \$1,375.00 which is equal to 50% of the amount of the monthly rent. By signing the tenancy agreement, the tenant agreed to pay liquidated damages in this amount if he ended the tenancy prior to September 30, 2022, which is the end date of the fixed term. Accordingly, I find that the landlord is entitled to his claim.

The tenant has agreed to pay the outstanding utilities and the late fee. Since the landlord has proven his claim, he is entitled to the recovery of the filing fee.

Overall, the landlord has established his entire claim of \$2,008.78. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

**Conclusion**

I grant the landlord a monetary order in the amount of **\$2,008.78**.

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: January 15, 2023

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Residential Tenancy Branch