



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

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

- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:46 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's agent (the "agent") 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 Hearing. I also confirmed from the teleconference system that the agent and I were the only ones who had called into this teleconference.

The agent was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The agent testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The agent confirmed the landlord's email address for service of this Decision.

### Preliminary Issue- Service

The agent testified that the tenant signed RTB Form 51 “Address for Service”. The aforementioned form, signed by the tenant, was entered into evidence and shows that the tenant provided an email address for service.

The agent testified that the tenant was served with the landlord’s application for dispute resolution on July 28, 2022 and the landlord’s evidence on July 14, 2022. The landlord filed for dispute resolution on July 14, 2022 and the dispute resolution package was made available to the landlord on July 28, 2022. The above described serving emails were entered into evidence. The email address stated as the address for service on RTB Form 51 was used in the above mailings. I find that the tenant was served with the above documents in accordance with sections 88 and 89 of the *Act*.

### Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to retain the tenant’s security and pet damage deposits, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

### Evidence and Analysis

While I have turned my mind to the documentary evidence and the testimony of the agent, not all details of the agent’s submissions and arguments are reproduced here. The relevant and important aspects of the agent’s claims and my findings are set out below.

The agent provided the following undisputed testimony:

- this tenancy began on October 31, 2021,
- this tenancy was a fixed term tenancy set to end on October 31, 2022 and to continue on a month to month basis after that,
- monthly rent in the amount of \$1,500.00 was payable on the first day of each month,

- a security deposit of \$750.00 was paid by the tenant to the landlord, and
- a pet damage desposit of \$750.00 was paid by the tenant to the landlord.

A written tenancy agreement and addendum were signed by both parties and a copy was submitted for this application and confirms the above testimony.

The agent testified that on June 7, 2022 the tenant gave notice to end the tenancy at the end of June 2022, via email. I accept the agent's undisputed testimony regarding how the tenancy came to an end. The agent testified that the landlord is seeking \$750.00 in liquidated damages because the tenant breached the fixed term tenancy agreement.

Section 1 of the addendum to the tenancy agreement states:

The tenant(s) agrees to pay to the Landlord, the sum of \$750.00 as liquidated damages. and not as a penalty, to cover the administration costs of re renting the said premises as well as pay for the advertising costs incurred should the tenant move before the end of the fixed term tenancy. The landlord and tenant acknowledge and agree that the payment of the said liquidated damages shall not preclude the landlord from exercising any further right of pursuing another remedy available in law or in equity, including, but not limited to damages to the said premises and damages as a result of rental income due to the tenant's breach of the terms of this agreement.

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. 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 in 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.

I find that the amount of ½ a month's rent stipulated to cover the administration costs that the landlord would have likely incurred at the time the tenancy agreement was entered into is reasonable and not extravagant or exorbitant in relation to the rent payable in this tenancy. I find that the liquidated damages term is not a penalty.

I find that the liquidated damages clause was clearly and carefully laid out in the tenancy agreement addendum and detailed the consequences of breaking the fixed term tenancy agreement to the parties. As stated earlier in this decision, the tenant signed the addendum. I find that the tenant is contractually bound by the terms of the addendum because she signed it. Pursuant to term 1 of the addendum I find that the tenant is liable to pay liquidated damages for causing the tenancy to end prematurely in the amount of \$750.00.

The agent testified that an agent for the landlord and the tenant completed a move in condition inspection report on October 31, 2021. The move in condition inspection report was entered into evidence and is signed by an agent of the landlord and the tenant. The move in condition inspection report states that the tenant agreed with the contents of the report.

The agent testified that an agent for the landlord and the tenant completed a move out inspection of the subject rental property on June 29, 2022 but the tenant refused to sign the move out condition inspection report. The tenant provided their forwarding address on the move out condition inspection report.

The move out condition inspection report states that the tenant owes \$750.00 for "broke lease" and \$360.00 for "cleaning and repairs". The agent entered into evidence an email from the tenant dated July 14, 2022 which states:

You want to change \$750 for breaking a lease ?  
No I don't agree to this.

This was an emergency, she got into car accident  
\$360 you can deduct

The agent testified that the landlord is seeking \$360.00 for repairs and cleaning to the subject rental property.

Section 38(4)(a) of the *Act* states that:

A landlord may retain an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant

I find that in the July 14, 2022 email from the tenant, the tenant agreed in writing that the landlord could retain the \$360.00 claimed by the landlord for damages and cleaning. Pursuant to section 38(4)(a) of the *Act*, the landlord is entitled to retain the \$360.00 agreed to by the tenant.

Section 44 of the *Act* sets out how a tenancy ends. Under section 45 of the *Act*, a tenant may not end the tenancy before the end of the fixed term. Even if the tenant attended and proved that a loved one got in a car accident, this would not remove the tenant's liability to pay liquidated damages.

Section 38(1) of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
  - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
  - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security and pet damage deposits pursuant to section 38(1)(a) and 38(1)(b) of the *Act*.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$1,210.00 from the security and pet damage deposits and must return the remaining \$290.00 to the tenant.

### Conclusion

I issue a Monetary Order to the tenant in the amount of \$290.00.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: April 05, 2023

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Residential Tenancy Branch