



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damages/unpaid rent / loss of revenue - Section 67;
2. An Order to retain the security / pet deposit - Section 38
3. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing.

The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to retain the security deposit?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The tenancy began on August 1, 2010 as a fixed term tenancy with an expiry date of July 31, 2011. Rent in the amount of \$800.00 was payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit

from the Tenant in the amount of \$400.00. The Landlord states that the Tenant ended the tenancy by giving verbal notice sometime in the month of January and moved out on January 29, 2011. Information on file indicates that the Tenant ended the tenancy due to mould in the unit. The Landlord states that there was mould around the windows of the unit and that it was easily wiped off.

A move-in and move-out inspection was completed with both the Landlord and Tenant present and the Tenant received a copy of the move-out report on the same date as the inspection. The move-out inspection indicates that no carpets need cleaning. The Landlord states that they incurred a cost for cleaning the carpet following the move-out.

The Lease agreement contains a liquidated damages clause that provides where the tenant ends a fixed term tenancy or is in breach of the Act, the tenant will pay the landlord the sum of \$250.00. The clause further sets out the following: "Liquidated damages are an agreed pre-estimate of the landlord's cost of re-renting the rental unit . . ." The Landlord states that advertising for the unit commenced as soon as the Tenant provided the notice and that the unit remains unrented to date. The Landlord was unable to provide a cost that was expended on advertising the unit other than a global cost of \$171.60 for a newspaper ad that included several other rental units being advertised concurrently by the Landlord. The Landlord states that both she and the caretaker's time was also expended in advertising and showing the unit, although the Landlord could not provide dates or time spent on this activity. The Landlord confirmed that she and the caretaker were carrying out usual and regular duties in time spent advertising and showing the unit.

The Landlord claims \$200.00 for carpet cleaning, \$250.00 for liquidated damages, \$800.00 for lost rental income for February 2011, and \$50.00 for the filing fee, for a total monetary claim of **\$1,300.00**.

### Analysis

The Tenants entered into a fixed term lease with an expiry date of July 31, 2011. The Tenants ended the tenancy prior to that date and I find that they therefore breached that

term of the lease. Accordingly, I find that the Landlord is entitled to the damages claimed for lost rent in the amount of \$800.00

Section 21 of the Residential Tenancy Regulation provides that a duly completed inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless the landlord has a preponderance of evidence to the contrary. Although the Landlord incurred costs for cleaning the carpet following the move-out by the Tenants, the move-out inspection completed by the Landlord and Tenant clearly indicates that none of the carpets required cleaning. The Landlord provided no other evidence on the condition of the carpet. Accordingly, I accept the move-out condition report as evidence that no carpets required cleaning and I find that the Landlord is not eligible for reimbursement of this claimed cost.

A liquidated damages clause in a tenancy agreement 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 be therefore unenforceable. In making determinations, the circumstances at the time the contract was entered into must be considered. In this case, the sum of \$250.00 is identified as a "pre-estimate of the landlord's costs of re-renting the rental unit . . . ". Since the tenancy was fairly brief, the costs at the time the lease was signed would be similar to the costs incurred at the end of the tenancy. The Landlord stated that at the end of the tenancy, both her and the caretakers time was spent placing advertisements and showing the unit. Even though the Landlord was not able to provide an actual amount of time spent in carrying out these tasks to re-rent the unit, it is clear that these are duties that are carried out regularly as part of their position and that they are not paid any extra for carrying out those duties in relation to the unit. The Landlord did not further provide any information on what portion of her or the caretaker's income is related to any one unit's re-rental. The only evidence the Landlord was able to provide was the one time cost of \$171.61 for advertising an unknown number of rental units, including the unit in this case. Considering these facts, I find on a balance of probabilities that the Landlord has not shown that the amount of \$250.00 is a genuine pre-estimate of the cost of re-renting the rental unit. Accordingly, I

find the liquidated damages clause constitutes a penalty and is unenforceable. I therefore dismiss this part of the Landlord's claim.

As the Landlord has established a monetary claim for \$800.00 in lost rental income, the Landlord is also entitled to recovery of the \$50 filing fee, for a total entitlement of **\$850.00**. The **security deposit** will be off-set from the award made herein.

***Calculation for Monetary Order***

Loss of rent revenue	\$800.00
Filing Fees for the cost of this application	50.00
Less Security Deposit and interest <i>to date</i>	-400.00
<b>Total Monetary Award</b>	<b>\$450.00</b>

Conclusion

**I Order** that the Landlord retain the **deposit** and interest of \$500.00 in partial satisfaction of the claim and I grant the Landlord an Order under Section 67 of the Act for the balance due of **\$450.00**. If necessary, this Order may be filed in the Small Claims 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 08, 2011.

---

Residential Tenancy Branch