



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain all or part of the tenant's security deposit. The tenant did not appear at the hearing. The landlord provided a registered mail receipt dated July 24, 2012 as proof of service of the hearing documents. The registered mail was successfully delivered to the tenant on July 26, 2012. I was satisfied the tenant has been sufficiently served with the hearing documents and I proceeded to hear from the landlord without the tenant present.

### Issue(s) to be Decided

1. Has the landlord established an entitlement to recover damages or loss from the tenant?
2. Is the landlord authorized to retain all or part of the tenant's security deposit?

### Background and Evidence

The tenant signed a fixed term tenancy agreement and paid a security deposit on July 5, 2012. The tenant gave the landlord \$720.00 of the \$820.00 security deposit in cash and a cheque in the amount of \$100.00. The tenant subsequently placed a "stop payment" on the cheque.

The tenancy was set to commence August 1, 2012. On July 7 and 8, 2012 the tenant communicated to the landlord that she would not be moving into the rental unit. The landlord confirmed receipt of the tenant's intentions via a letter dated July 9, 2012. The landlord proceeded to find a replacement tenant and did so on July 19, 2012.

The landlord submitted that the tenant refused to come into the landlord's office to complete the paperwork with respect to the end of the tenancy and the security deposit. Consequently, the landlord returned \$345.00 of the tenant's security deposit on July 24, 2012 and filed this application to retain the balance of the tenant's security deposit of \$375.00.

The landlord is seeking to retain the balance of the security deposit for liquidated damages (\$350.00) and a returned cheque administrative fee (\$25.00). In addition, the landlord requested a Monetary Order for recover of the filing fee.

The tenancy agreement provides for a liquidated damages clause in the amount of \$350.00 to cover the administrative costs of re-renting the unit. The clause provides that the tenant will pay this amount in the event the tenant ends the fixed term tenancy before the end of the original term.

The tenancy agreement also provides that late payment, returned or NSF cheques are subject to an administrative fee of \$25.00.

Documentary evidence provided by the landlord included copies of: the tenancy agreement; the returned cheque, and the landlord's letter to the tenant dated July 9, 2012.

### Analysis

Residential Tenancy Policy Guideline 4 provides for liquidated damages. 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 fixed term by the tenant. If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum unless the sum is found to be a penalty. I find the amount payable under the clause to be a reasonable pre-estimate and is not a penalty. Therefore, I grant the landlord's request to recover liquidated damages of \$350.00 from the tenant.

The Residential Tenancy Regulations provides that a landlord may charge a tenant an administrative fee of up to \$25.00 for returned cheques provided the tenancy agreement provides for such a charge. I am satisfied the landlord is entitled to charge the tenant a \$25.00 administrative fee for the returned cheque and I award that amount to the landlord.

I authorize the landlord to retain the remainder of the security deposit in satisfaction of the above awards.

I further award the filing fee to the landlord given the landlord's success in this application. Therefore, I provide the landlord with a Monetary Order in the amount of \$50.00 to serve upon the tenant and enforce as necessary.

Conclusion

The landlord is authorized to retain the balance of the tenant's security deposit. The landlord is also provided a Monetary Order in the amount of \$50.00 to serve and enforce.

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: October 10, 2012.

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Residential Tenancy Branch