



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, MNR, MNSD, FF

### Introduction

There are applications filed by both parties. The Landlord has made an application for a monetary order for money owed or compensation for damage or loss, for unpaid rent or utilities, to keep all or part of the security deposit and recovery of the filing fee. The Tenant has made an application for a monetary order for money owed or compensation for damage or loss and for the return of the security deposit.

Both parties have attended the hearing by conference call and gave testimony. As both parties have confirmed receipt of the notice of hearing and evidence packages submitted, I am satisfied that both parties have been properly served.

Section 72 of the Act addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the Landlord's claim for recovery of litigation costs (postage) is dismissed.

### Issue(s) to be Decided

Is the Landlord entitled to a monetary order?  
Is the Landlord entitled to retain the security deposit?  
Is the Tenant entitled to a monetary order?

### Background, Evidence and Analysis

Both parties agreed that this Tenancy began on March 21, 2012 on a fixed term tenancy for 1 year ending on April 1, 2013 as shown by the submitted copy of the signed tenancy agreement. Both parties agreed that the Tenant vacated the rental unit on October 8, 2012. The monthly rent was \$825.00 payable on the 1<sup>st</sup> of each month and a security deposit of \$412.50 and a pet damage deposit of \$200.00 was paid on March 21, 2012. Both parties agreed that the forwarding address in writing was received by the Landlord on October 15, 2012.

The Landlord seeks a monetary claim of \$2,881.59. This consists of \$825.00 for the unpaid rent for October 2012. The Tenant has conceded that October rent was unpaid. The Landlord also seeks \$1,000.00 as liquidated damages for breaching the lease as per addendum condition #1. The Tenant disputes that any damages or losses have occurred and has conceded that the only loss is the \$825.00 October rent. The Landlord stated in his direct testimony that he was able to re-rent the unit for November 1, 2012. Residential Tenancy Branch Policy Guidelines regarding liquidated damages states,

“ 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. “

The Landlord also seeks \$300.00 as a rent fine based upon addendum #9 in the tenancy agreement. The Landlord states that the addendum provides for a \$20.00 per day fine for all rent not received by the first day of the month.

I find that these addendum conditions #1 and #9 to be contrary to the Act and unconscionable and unenforceable. The Landlord has failed to satisfy me that this is a true accounting of a genuine pre-estimate of the loss. The Act only allows for a maximum \$25.00 late rent fee per month. These portions of the Landlord's claims are dismissed.

The Landlord seeks \$82.50 for cleaning charges by “Cleaning Services” dated October 15, 2012 based upon the invoice submitted. The Tenant disputes that any cleaning or damage was required and has submitted photographs of the rental unit. The Landlord states based upon the invoice that lots of cleaning and some repairs were necessary as noted on the invoice. Both parties have confirmed that no condition inspection reports for the move-in or the move-out were completed.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,

2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Landlord's cleaning claim of \$82.50 is in dispute by the Tenant. The Landlord relies solely on the invoice. Although the invoice provides details on the work performed and the cost incurred, the Landlord has failed to satisfy me that any damage or loss occurred due to the actions or neglect of the Tenant. This portion of the Landlord's claim is dismissed.

The Tenant had made an application for the return of double the pet and security deposits of \$1,225.00. Residential Tenancy Act Section 38 states,

38 (1) Except as provided in subsection (3) or (4) (a), **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.

The Tenancy ended on October 8, 2012. The Tenant provided to the Landlord her forwarding address in writing on October 15, 2012. The Landlord applied for dispute resolution on October 19, 2012. I find based upon this undisputed testimony of both parties that the Landlord complied with the Act and that the Tenant is not entitled to the return of double the pet and security deposits. The Tenant's application is dismissed.

The Landlord has established a total monetary claim of \$825.00 for unpaid rent. The Landlord is entitled to recovery of the \$50.00 filing fee. I order that the Landlord retain the \$612.50 combined deposits in partial satisfaction of the claim and I grant a monetary order under section 67 for the balance due of \$262.50. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord is granted a monetary order for \$262.50.  
The Landlord may retain the security and pet damage deposits.  
The Tenant's application is dismissed without leave to reapply.

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 22, 2013

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Residential Tenancy Branch

