



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REMAX BLUEPRINT REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR MNSD MNDC

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on July 13, 2015. The Landlord filed seeking a Monetary Order for unpaid rent or utilities; to keep the Tenant's security deposit; and for money owed or compensation for damage or loss under the *Act*, Regulation or tenancy agreement.

The hearing was conducted via teleconference and was attended by the Landlord. No one was in attendance on behalf of the Tenant. The Landlord provided affirmed testimony that the Tenant was served notice of this application and this hearing by registered mail on July 23, 2015 to the forwarding address provided by the Tenant. Canada Post tracking information was submitted into evidence.

Section 89 of the *Act* provides that registered mail is an accepted form of service for an application for Dispute Resolution if sent to the forwarding address provided by the respondent.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed.

Based on the undisputed evidence of the Landlord, I find that the Tenant was deemed served notice of this hearing on July 28, 2015 in accordance with Sections 89 and 90 of the *Act*. The hearing continued to hear the undisputed evidence of the Landlord.

On July 24, 2015 the Landlord submitted 22 pages of evidence to the Residential Tenancy Branch (RTB). A second package of evidence was received from the Landlord on January 5, 2016. The Landlord affirmed that they served the Tenant with copies of the same documents that they had served the RTB. As such, I accepted the Landlord's submissions as evidence for these proceedings.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to monetary compensation?
2. If so, should that compensation be offset against the Tenant's security deposit?

Background and Evidence

The Tenant entered into a fixed term tenancy agreement that began on December 1, 2013 and was scheduled to end on November 31, 2014 [sic]. Rent of \$1,100.00 was payable on the first of each month and on November 15, 2013 the Tenant paid \$550.00 as the security deposit.

The move in condition report form was completed on November 27, 2013 in the presence of both parties. The Tenant vacated the property by September 30, 2014 and the move out condition report form was completed on October 1, 2014 in the presence of both parties. The Tenant returned the rental unit keys and provided a forwarding address during the move out inspection. The Tenant signed the move out condition report form agreeing to allow the Landlord to apply their security deposit to towards the unpaid rent.

The tenancy agreement was provided in evidence and at item 17 (c) indicates there was a 2 page addendum attached to the tenancy agreement. A two page document titled EXHIBIT "A" was submitted with the tenancy agreement and listed 7 additional terms including the following:

*2) If the Tenant(s) breeches this tenancy during the original term, the Landlord may, at the landlord's option, treat this Tenancy Agreement at an end and in such event, the sum of \$850.00 or \_\_\_\_\_ shall be paid by the Tenant(s) to Landlord as liquidated damages and not as a penalty. The payment by the Tenant(s) of the said liquidated damages to the Landlord is agreed to be in addition to any other rights or remedies available to the Landlord.*

[Reproduced as written]

The Landlord testified that the document titled EXHIBIT "A" was the addendum referred to in the tenancy agreement. She stated that the Tenant was advised that the liquidated damages were intended to cover the costs incurred to re-rent the unit in the event the Tenant broke the lease and that he agreed to the sum of \$850.00 at the time he signed the tenancy agreement. They now claim the \$850.00 for liquidated damages.

The Landlord submitted that the Tenant did not pay rent during the last four months of this tenancy, June 2014 through to September 2014. She submitted that a 10 Day Notice to end tenancy was posted to the Tenant's door on July 15, 2014, as provided in evidence. Two subsequent 10 Day Notices were issued on August 6, 2014 and September 15, 2014. The Landlord said they did not enforce the 10 Day Notices as they had attempted to work with the Tenant as he had been having a difficult time. The Tenant paid a partial payment of \$1,000.00 which was received August 25, 2014. The Landlord now seeks to recover the unpaid rent of \$3,400.00 (4 x \$1,100.00 - \$1,000.00) for June 2014 through September 2014.

The Landlord testified that despite their efforts to re-rent the unit for as soon as possible they were not able to re-rent the unit until January 1, 2015. As a result they are seeking to recover \$2,200.00 loss of rent for the last two months of the fixed term tenancy for October and November 2015.

### Analysis

Given the evidence before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlord and corroborated by their evidence.

**Section 7** of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 45 (2) of the Act stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is not earlier than the date specified in the tenancy agreement as the end of the tenancy.

The undisputed evidence was the Tenant entered into a fixed term tenancy agreement that was not scheduled to end until the end of November 2014. The Tenant ended the tenancy September 30, 2014, two months prior to the end of the fixed term, in breach of the tenancy agreement and section 45 of the *Act*.

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance what damages are payable in the event of a breach of the tenancy agreement. For example, a liquidated damages clause could be included in an agreement to cover the costs of re-renting the rental unit or simply to cover the cost of booking the elevator in the event the tenancy agreement was breached.

Residential Tenancy Policy Guideline 4 provides, in part, 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 for liquidated damages 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 would be unenforceable. For example, if a liquidated damages clause was intended to cover the costs of re-renting the rental unit the estimated loss would be higher than if it were intended to cover only the cost of booking the elevator at move out.

I accept the Landlord's undisputed submission that the Tenant had been advised that the liquidated damages clause was intended to cover the costs of re-renting the rental unit and that he agreed to the pre-estimated amount of \$850.00. Accordingly, I grant the Landlord's application for liquidated damages in the amount of **\$850.00**.

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement.

Residential Tenancy Policy Guideline 11 provides, in part, that the giving of a second Notice to End Tenancy does not operate as a waiver of a Notice already given. I agree with this policy.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant was served the first 10 Day Notice on July 15, 2014 when it was posted to the Tenant's door for unpaid rent of June and July 2014 (2 x \$1,100.00). The Tenant is deemed to have received the Notice on July 18, 2014, three days after it was posted. Therefore, the effective date of the Notice was **July 28, 2014**.

The Tenant neither paid the rent nor disputed the Notice; therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **July 28, 2014**, pursuant to section 46(5) of the *Act*.

The Landlord claimed unpaid rent of \$2,200.00 (2 x \$1,100.00) that was due July 1, 2014, in accordance with section 26. I find the Landlord provided sufficient evidence to prove their claim and grant their application for June and July 2014 unpaid rent in the amount of **\$2,200.00**.

As noted above this tenancy ended **July 28, 2014**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit and not rent for August and September 2014. The undisputed evidence was the Tenant continued to occupy the rental unit until September 30, 2014 and paid \$1,000.00 on August 25, 2014. Therefore, I award the Landlord use and occupancy for August and September in the amount of **\$1,200.00** (2 x \$1,100.00 - \$1,000.00).

I accept the Landlord's submission that despite their attempts to re-rent the unit for as soon as possible they were not able to do so until January 1, 2015. As a result the Landlord lost two month's rent for the last two months of the fixed term, October and November 2014. Accordingly, I grant the Landlord's claim of lost rent for October and November 2014 in the amount of **\$2,200.00** (2 x \$1,100.00).

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Liquidated Damages	\$ 850.00
Unpaid Rent June & July 2014	2,200.00
Use and Occupancy Aug. & Sept. 2014	1,200.00
Loss of Rent Oct. & November 2014	2,200.00
Filing Fee	<u>100.00</u>
<b>SUBTOTAL</b>	\$6,550.00
<b>LESS:</b> Security Deposit \$550.00 + Interest 0.00	<u>-550.00</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$6,000.00</u></b>

### Conclusion

The Landlord was successful with their application and was granted a monetary compensation in the amount of \$6,550.00 which was offset against the Tenant's security deposit leaving a balance owed to the Landlord of \$6,000.00.

The Landlord has been issued a Monetary Order in the amount of **\$6,000.00**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with 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: January 15, 2016

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Residential Tenancy Branch

