



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BAYSIDE PROPERTY SERVICES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** MNSD, MNDC, MND, FF

### **Introduction**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order for liquidated damages, cost of cleaning the carpet, painting and for the filing fee. The landlord also applied to retain the security deposit.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The tenant acknowledged receipt of evidence submitted by the landlord. Both parties gave affirmed testimony.

### **Issues to be decided**

Is the landlord entitled to a monetary order for liquidated damages, cost of cleaning the carpet, painting and for the filing fee? Is the landlord entitled to retain the security deposit?

### **Background and Evidence**

The landlord testified that the parties entered into a tenancy agreement in August 2014 for a fixed term which would end on July 31, 2015. The monthly rent was \$1,110.00 payable on the first of each month. Prior to moving in, the tenant paid a security deposit of \$512.50. The landlord filed a copy of the tenancy agreement that contains a clause regarding liquidated damages. The clause requires the tenant to pay \$550.00 as liquidated damages in the event the tenant ends the fixed term lease prior to the end date of the fixed term.

The landlord filed a copy of a second lease entered into by the parties for a second fixed term lease starting August 01, 2015 with an end date of July 31, 2016. The second lease is signed by the tenant and the building manager but is undated. Neither party could recall the date that this tenancy agreement was entered into.

On July 31, 2015, the tenant gave the landlord notice to end the tenancy effective August 31, 2015. A move out inspection was conducted on August 31, 2015 and the tenant provided the landlord with a forwarding address. The landlord made application to retain a portion of the security deposit in a timely manner.

Upon receipt of the tenant's notice to end tenancy and during the move out inspection, the landlord reminded the tenant that he was required to pay liquidated damages. The landlord stated that she agreed to accept \$275.00 instead of the agreed upon amount of \$550.00. The tenant refused to pay liquidated damages.

The landlord mitigated her losses by looking for a new tenant and found one for September 01, 2015. The landlord agreed that she had not suffered a loss of income between tenancies.

The landlord is claiming the following:

1.	Liquidated damages	\$275.00
2.	Carpet cleaning	\$78.75
3.	Painting	\$50.00
4.	Cleaning	\$25.00
5.	Filing fee	\$50.00
	Total	<b>\$478.75</b>

### **Analysis**

The tenant was in a fixed term tenancy that ended on July 31, 2015. The landlord stated that the tenant had entered into a second fixed term tenancy starting August 01, 2015. The tenant agreed that he had signed a tenancy agreement but could not remember the date that he had signed it. The landlord also was not sure of the date that the second tenancy agreement was entered into.

However both parties agreed that the tenant gave written notice on July 31, 2015 which is the end date of the first tenancy agreement, to end the tenancy by August 31, 2015. Since the second tenancy agreement is undated and neither party could remember the date it was signed, I must disregard this agreement.

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a periodic 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 the day before the day in the month that rent is payable under the tenancy agreement.

In this case, I find that the fixed term ended on July 31, 2015 and on that day the tenant gave notice to end the tenancy effective August 31, 2015. Since the tenant did not contravene the terms of the fixed term tenancy agreement, I find that the landlord is not entitled to liquidated damages.

The tenant agreed to cover the cost of carpet cleaning, painting and cleaning.

Since the landlord has proven a portion of her claim, I award the landlord the recovery of the filing fee of \$50.00

Overall the landlord has established a claim as follows:

1.	Liquidated damages	\$0.00
2.	Carpet cleaning	\$78.75
3.	Painting	\$50.00
4.	Cleaning	\$25.00
5.	Filing fee	\$50.00
	Total	<b>\$203.75</b>

I order that the landlord retain **\$203.75** from the security deposit in full satisfaction of the claim and I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the balance due of **\$308.75**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the landlord a monetary order in the amount of **\$308.00**.

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: March 17, 2016

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Residential Tenancy Branch