



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNDC, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for a Monetary Order for loss or damage under the Act, regulations and tenancy agreement, to retain part of the Tenant's security deposit and to recover the filing fee for this proceeding.

The Landlords said they served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on April 11, 2018. Based on the evidence of the Landlords, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Are there losses or damages to the Landlords and if so how much?
2. Are the Landlords entitled to compensation for loss or damage?
3. Are the Landlords entitled to keep the Tenants' security deposit?

### Background and Evidence

This tenancy started on August 1, 2017 as a fixed term tenancy with an expiry date of August 1, 2018. Rent was \$2,200.00 per month payable on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$1,100.00 on July 15, 2017. The Landlord said the Tenant moved out of the rental unit on or about April 1, 2018. Condition inspection reports were completed at the start and end of the tenancy. The Tenant provided the Landlord with a forwarding address in writing on February 28, 2018.

The Landlords said the Tenants gave them a 30 day notice to end tenancy on February 28, 2018. The Landlords continued to say this was a breach of the fixed term tenancy as the contract stated the tenancy ended on August 1, 2018. The Landlords said they did not agree to ending the tenancy on April 1, 2018 as requested in the Tenants' letter. The female Landlord said they tried to work with the Tenants on a move out date but no agreement was reached. As well the Landlords said the Tenants gave them a Mutual Agreement to End Tenancy form for the Landlords to sign, but the Landlords did not agree with it so they did not sign it.

As a result of the Tenants breaking the fixed term tenancy agreement the Landlords have applied for lost rental income for when the unit was empty in the amount of \$73.33 and for \$200.00 per month for 4 months which represents the reduction in rent the Landlords took to get the unit rented quickly. The Landlords said they showed the unit 5 times in March, 2018 and rented it on April 3, 2018 at a reduced rent of \$2,000.00 per month.

In addition the Landlords are also requesting to recover a hydro bill in the amount of \$32.50, a natural gas bill in the amount of \$23.40 and an adverting invoice for \$20.00. The Landlord also requested to recover the filing fee of \$100.00 if their application is successful.

The Tenant said the rental unit was unliveable because the tenant in the lower unit was very noisy, she partied late at night and she smoked in the unit. As a result the Tenant said they loss all the enjoyment of living in the rental unit and they decided to move out. The Tenant said they thought they had given proper notice to the Landlord in their letter of February 28, 2018 giving the Landlord 30 days notice. The Tenant continued to say that he believes the Landlords did not try hard enough to get a replacement renter at the same rent amount \$2,200.00 that they were paying. Consequently the Tenant said he does not believe they are responsible for any lost rent.

Further the Tenant said he is not disputing the utility charges and he is willing to pay them. The Tenant continued to say that he thinks the advertising costs are the responsibility of the Landlords.

The Tenant continued to say they did present the Landlords with a Mutual Agreement to End Tenancy but the Landlords would not sign it. The Tenant said the Landlords wanted them to stay longer in the unit but they could not tolerate the situation with the lower tenant so they moved out.

The Tenant said in closing that he submitted a real estate analysis for the area the rental unit is in and it shows that the Landlords could have got \$2,200.00 per month for the unit if they had waited for the right tenants.

The Landlord said in closing they tried to rent the unit for \$2,200.00, but they were unsuccessful so they mitigated their losses by renting it for \$2,000.00 starting April 3, 2018, which meant the unit was empty for only two days.

### Analysis

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Further unpaid utilities are treated as unpaid rent if the utilities are unpaid 30 days following a formal demand for payment of the utilities. I find a formal demand has been made in this situation by the application therefore the unpaid utilities will be deemed as unpaid rent.

I accept the Landlord's evidence and testimony that the Tenants have unpaid utilities in the amount of \$32.50 for hydro and \$23.40 for natural gas in the total amount of \$55.90. As the Tenants are not disputing this claim; I award the Landlord \$55.90 for unpaid utilities.

Section 45 of the Act says a Tenant may end a fixed term tenancy **not earlier than the date specified in the tenancy agreement** and it must be with written notice at least one month prior to the date that rent is payable or with the agreement of the Landlord.

The Tenants did not give the Landlords proper notice to end the tenancy and the Landlords did not agree to end the tenancy in writing. Consequently, the Tenants are responsible for the rent until the end of the fixed term of the tenancy or until the Landlord enters into a new tenancy. The Landlord submitted a new tenancy agreement that started on April 3, 2018; therefore the Tenants are responsibility for the time the unit was empty. I award the Landlords their claim \$73.33 for the time the unit was empty. The Landlords are also requesting compensation for the difference between the Tenants' rental amount \$2,200.00 and the new tenancy rental amount \$2,000.00 for the term of the fixed term tenancy agreement. This amount is \$200.00 per month for 4 months in the total amount of \$800.00.

Section 7 (2) of the Act says 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.**

I accept the Landlords' testimony that they advertised, showed and made reasonable efforts to rent the unit as soon as possible and at the market rate. I find the Landlord made a reasonable decision to lower the rental amount to successfully rent the unit and mitigate any further losses. Further, I find the Landlords mitigated their losses and the Landlords have complied with the Act and regulations.

I award the Landlords the lost rental income for 4 months at \$200.00 each month in the amount of \$800.00, as a result of the Tenants breaching the terms of a fixed term tenancy agreement.

Further as the Tenants broke the fixed term tenancy agreement I find the Landlords incurred advertising costs to mitigate the Landlord's losses. Consequently I award the Landlord \$20.00 for adverting costs as liquidated damages.

As the Landlord has been successful in this matter, they are also entitled to recover from the Tenants the \$100.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep a portion of the Tenants' security deposit in payment of the Landlord's claims as follows:

Unpaid utilities	\$	55.90	
Loss rental income for April	\$	73.33	
Loss rental income reduction of rent	\$	800.00	
Liquidated damages (advertising)	\$	20.00	
Recover filing fee	\$	100.00	
Subtotal:			\$ 1,049.23
Less:	Security Deposit	\$ 1,100.00	

Subtotal: \$ 1,100.00

Balance Owing to Tenants \$ 50.77

Conclusion

I order the Landlord to return \$50.77 of the Tenants security deposit forthwith. .

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: September 25, 2018

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Residential Tenancy Branch