



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes

MNR, MNR, MNDC, MNDS, & FF

### Introduction

This hearing dealt with an application by the landlord seeking a monetary claim due to loss of rent due to breach of the tenancy agreement and for cleaning and repairing the rental unit. The landlord also seeks to retain the tenants' security deposit plus interest in partial satisfaction of this claim.

On June 8, 2009 the *Residential Tenancy Branch* (the Branch) received information from the tenants seeking an adjournment. At the hearing, after hearing submissions from both parties, I agreed to reconvene the hearing to allow both tenants to attend. The hearing was rescheduled to June 22, 2009 by conference call.

Both parties appeared at the reconvened hearing and were provided the opportunity to be heard and to respond to the evidence of the other party.

### Issues(s) to be Decided

Is the landlord entitled to a monetary claim related to loss of rental revenue due to breach of the fixed term tenancy agreement and to clean the rental unit?

### Background and Evidence

The parties entered into a fixed term tenancy on December 24, 2008 for a six (6) month lease beginning January 1, 2009 and ending June 30, 2009 at which point the tenancy could revert to a month to month tenancy. The rent was \$1,300.00 per month and a security deposit of \$650.00 was paid on December 24, 2009. The agreement also provided that if the lease was terminated early there would be a liquidated damage charge of \$300.00. The contract also specified that proper notice to end the tenancy was required.

The landlord submitted that the tenants gave abrupt notice near the end of February 2009 to end the tenancy and vacated the rental unit by March 1, 2009. The landlord stated that the tenants were reminded of their obligation to the lease and that they had the option of assigning or subletting their lease.

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Although a move-in and move-out condition inspection report was completed the tenants denied being provided the opportunity to complete the move-out inspection. The landlord stated that the tenants were too busy and she received oral consent to apply the security deposit to any cleaning required and any damages as a result of the tenants' breaking the lease. This included some garbage or debris that was left behind and needed to be dumped.

The landlord stated that the rental unit was not rented until May 1, 2009. As a result the landlord is seeking the following damages:

Loss of March 2009 rent	\$1,300.00
Loss of April 2009 rent	\$1,300.00
Garbage disposal fee	\$60.00
Liquidated damages pursuant to the tenancy agreement	\$300.00
Recovery of \$50.00 filling fee paid for this application	\$50.00
<b>Total</b>	<b>\$3,035.00</b>

I note that this sum is \$655.00 more than the amount claimed by the landlord in their Application for Dispute Resolution. The landlord seeks to retain the tenants' security deposit plus interest in partial satisfaction of this claim.

The tenants' dispute the landlord's claim. Although they acknowledged that they had to breach the lease due an emergency, they question whether the landlord tool sufficient measures to mitigate their losses. The tenants stated that they forwarded on people for consideration as tenants to the landlord and question why none of these referred individuals were accepted as renters. The tenants submitted that it was their position that the landlord could have re-rented the unit sooner.

The landlord responded by indicating that if there were referrals from the tenants, those individuals never identified themselves as having been referred. The landlord also submitted that the landlord has the right to review and assess potential tenants to ensure that they are suitable perspective occupants.

## Analysis

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*.

I grant the landlord's application in part. I accept that the tenants entered into a six (6) month lease and due to personal circumstances had to breach that agreement. I also

accept that the tenants' failed to give sufficient notice and left within days of notifying the landlord.

As a result I find that the tenants are responsible for one month's rent of \$1,300.00 due to their failure to provide 30 days notice in writing, I accept the \$25.00 late fee as the tenants' failed to pay the rent and I find that the tenants are responsible for the agreed to liquidated damages of \$300.00. I also grant the landlord's request to recover the filling fee paid for this application from the tenants.

I deny the other costs claimed by the landlord as the landlord has failed to provide sufficient evidence to satisfy me that all measures were taken to mitigate any further loss. The landlord did not provide any evidence to support the claim that the rental unit could not be rented until May 1, 2009. The landlord did not provide any evidence showing how the suite was being advertized or how many times it was shown.

I also reject the landlord's claim that there were costs associated with removing items from the rental unit for the sum of \$60.00. The receipt provided by the landlord only indicates that the sum is for "general suite cleaning" with no explanation as to what was completed during the six hours. Also, I find that I cannot rely on the move-out condition inspection report as the document has no place to confirm that the tenant participated in the inspection and agreed with the inspection. I accept the tenants' evidence that no consent was provided to the landlord to retain the security deposit. As a result the landlord extinguished any right to retain the tenants' security deposit.

I find that the landlord has established a total monetary claim for the sum of **\$1,675.00**. Despite the fact that the landlord has extinguished the right to retain the tenants' security deposit plus interest, section 72 of the *Act* allows me to off set a monetary claim established by a landlord from a tenants' security deposit, if it is prudent to do so. In the circumstances before me, I find it is appropriate to offset the landlord's monetary claim by the tenants' security deposit plus interest of \$650.21.

I grant the landlord a monetary claim for the remaining balance owed of **\$1,024.79**.



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## Conclusion

The landlord's application is granted in part. I have accepted a monetary claim for the sum of \$1,024.79 due to the tenants' breach of the fixed term tenancy agreement.

Dated: July 16, 2009.

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Dispute Resolution Officer