



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail on August 29, 2010 the Tenants did not appear.

The Landlord's Agent appeared, gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to an order for monetary relief?

### Background and Evidence

This was an original fixed term tenancy, beginning on November 1, 2005, and ending on April 30, 2006. The tenancy continued thereafter on a month to month basis, until the Tenants gave written notice, dated July 6, 2010, of their intent to vacate on July 31, 2010.

The rent was \$730.00 per month, parking was \$25.00 per month, and a security deposit in the amount of \$390.00 was paid on October 1, 2004, when the Tenants were in another rental unit.

The Landlord's Agent testified that the rental unit was placed back in the general rental pool and was immediately made available for rent. The Agent further testified they marketed the rental unit through print ads and internet banner advertising, but that it was not re-rented until September 2010.

The amount of the Landlord's claim is \$755.00, for the August rent and parking, plus the filing fee.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find the Landlord did not submit sufficient documentary evidence to prove the fourth element, and therefore I am not convinced that they took the necessary steps to mitigate their claimed loss by advertising and marketing of the rental unit. In the absence of proof, I am unable to grant the Landlord a monetary order and I **dismiss** their Application in its entirety.

I find that the Tenants supplied the Landlord with a written notice of their forwarding address on August 20, 2010, and are entitled to a return of their security deposit. RTB Policy Guideline 17 regarding security deposits states the dispute resolution officer will order the return of the security deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

Therefore I find that the Tenants are entitled to a return of their security deposit and interest in the amount of **\$403.81**, and I grant and issue the Tenants a monetary order in those terms.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord's Application is dismissed.

The Tenants are granted a monetary order for **\$403.81**.

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: December 08, 2010.

---

Dispute Resolution Officer