



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties and their witnesses the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties and the witnesses.

All testimony was taken under affirmation.

### Issue(s) to be Decided

This is a request for a monetary order for \$9,423.73. The applicant is also requesting recovery of the \$100.00 filing fee.

### Background and Evidence

This tenancy began on January 1, 2009 and was a fixed term tenancy with an expiry date of December 31, 2013.

The rent was \$1000.00 per month.

The tenants ended the tenancy prior to the end of the fixed term and vacated on July 1, 2011.

The applicant is claiming that:

- He did not lose any rent; however to ensure that he was able to re-rent the unit he hired a rental agent and agreed to pay a one-time rental fee of \$336.00, as well as a monthly management fee of \$140.00.
- Since the new tenants only signed a one year lease it's likely he will also have another rental fee of \$336.00 before the end of the five-year term.
- There were some of his belongings in the basement of the rental unit at the beginning of the tenancy however all those items were missing at the end of the tenancy and therefore he believes that the tenant should pay for replacement cost of those items.
- He has supplied photos of the missing bed, dresser, table, hanger and bird.

The applicant is therefore requesting a claim as follows:

Re-renting fee \$336.00 X 2	\$672.00
Property management fee 31 X \$140.00	\$4340.00
Missing double bed	\$1727.73
Missing dresser	\$1120.00
Missing table, carpet, close hanger, and bird	\$896.00
Missing three antique trunks	\$500.00
Missing the winter air conditioner cover	\$168.00
Filing fee	\$100.00
Total	\$9523.73

The respondent's testified that:

- They did break the fixed term tenancy agreement however they had first spoken to the landlord and asked him what kind of notice they would need to get out of the agreement, and the landlord had stated any notice we would like to give.

- We therefore asked the landlord if 30 days would be okay and he stated that was fine.
- With regards to the contents that were left in the basement, at the beginning of the tenancy, the landlord stated we could keep the items or get rid of them, it was our choice.
- These were very old items and of little if any value.
- The carpet and the trunks actually got mouldy in the damp basement and therefore were thrown out near the beginning of the tenancy.
- We even called the landlord to show him the mould and he told us to go ahead and throw them out.
- We stored the other items in the basement even though we had no use for them, and then dispose of them at the end of the tenancy because again the landlord had told us to do with them as we saw fit.

The respondents therefore believe that this whole claim is unjustified and that their full security deposit should be returned.

### Analysis

It is my decision that I will not allow any of the landlords claim against the tenants.

It's true that the tenants did break their fixed term tenancy agreement; however the rental unit was rented out for the same amount that they were paying and therefore no actual rent was lost.

Further I accept the tenant's testimony that the landlord had allowed them out of the lease on 30 days notice.

I will not allow the landlords claim for paying management company fees for renting the unit or managing the unit, as this is a choice the landlord has made and not something that was necessary.

I also deny the landlords claim for the missing items.

I have viewed the photo evidence supplied by the landlord, and the items for which he is claiming over \$4000, were very old and had little if any value.

Considering the age of the items claimed by the landlord, I accept the tenants claim that the landlord had told them they could dispose of them if they saw fit.

Further since I am denying the landlords full claim, the landlord is required to return the tenants full security deposit and in fact he must return double the security deposit, because his right to claim against the security deposit was extinguished for failing to complete the required move in inspection report, and move out inspection report.

The tenants paid a deposit of \$500.00, and therefore the landlord is required to pay \$1000.00 to the tenants.

### Conclusion

This application is dismissed in full without leave to reapply and I have issued an order for the landlord to pay \$1000.00 to the tenants.

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: November 02, 2011.

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Residential Tenancy Branch