



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord testified that he sent the tenants copies of his dispute resolution hearing package by registered mail. The tenants confirmed that they received this package by registered mail on December 23, 2011. I am satisfied that the landlord served this package in accordance with the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

The parties agreed that they entered into a residential tenancy agreement on November 28, 2011. During the hearing, the parties agreed that the tenants rented the entire rental property, including a basement area that had a tenant at that time, as of January 1, 2012. Monthly rent for this one-year fixed term tenancy was set at \$3,600.00, payable in advance on the first of each month. The parties agreed that the tenants paid a \$1,800.00 security deposit on November 28, 2011, which the landlord has retained.

On December 1, 2011, the tenants provided the landlord with written notice that they had changed their minds about this tenancy and notified the landlord that they were not

intending to occupy the rental premises. They requested a return of their security deposit at that time.

The landlord's application for a monetary award of \$3,735.26 included the following items noted in his application:

<b>Item</b>	<b>Amount</b>
Reimbursement for Rental Ads Placed December 2, 2011	\$67.63
Reimbursement for Rental Ads Placed December 13, 2011	\$67.63
Loss of Rent for January 2012	3,600.00
<b>Total Monetary Award Requested</b>	<b>\$3,735.26</b>

The landlord also applied for the recovery of his \$50.00 filing fee for his application and for authorization to retain the tenants' security deposit in partial satisfaction of the monetary award he was requesting. Neither party entered any written evidence.

At the commencement of the hearing, the landlord testified that he had been successful in obtaining new tenants for this rental property who moved into the premises that were going to be occupied by the tenants and commenced paying \$3,600.00 in monthly rent as of January 1, 2012. However, he said that the new tenants wanted the entire house, requiring the basement tenant to vacate the rental unit by that date.

Although he was receiving replacement rent as of January 1, 2012 from the new tenants, he testified that he was losing \$750.00 in monthly rent from the loss of the basement tenant as the basement tenant had vacated the rental unit and he had not yet found a new tenant to replace that rent. He said that he evicted the basement tenant when the tenants signed their fixed term tenancy commencing on January 1, 2012. He said that he continues to advertise the basement suite.

After the landlord completed giving his evidence and after the tenants gave their oral testimony confirming that the facts regarding the tenancy were essentially as described by the landlord, the landlord changed his sworn testimony regarding the new tenants. He testified that he was mistaken in his previous evidence. He said that the new tenants are actually only paying \$3,200.00 per month. He testified that the new tenants' first monthly rent payment of \$3,200.00 was for January 2012. He revised his previous testimony to state that the new tenants were not interested in occupying the basement area and, for that reason, he was involved in trying to locate a new basement tenant.

At that point, the parties agreed that the tenants had committed to rent the entire rental property including the basement area when they signed their residential tenancy agreement in November 2011. Since the landlord had included the basement in the rental of the property to the tenants, he issued a notice to end tenancy to his existing basement tenant. When the new tenants decided that they did not wish to rent the basement area, he asked the existing basement tenant if he was interested in staying. The landlord testified that by that time, the existing basement tenant had made arrangements to secure accommodations elsewhere. The landlord asked for recovery of his loss of rent from the basement tenant as a result of the tenants' failure to occupy the premises.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. The *Act* establishes that a tenancy commences on the date that the parties sign the residential tenancy agreement, whether or not the tenants actually occupy the rental premises. Although neither party submitted a copy of this agreement, I find that both parties agreed that a one-year fixed term tenancy agreement was signed and the tenants did pay a security deposit on November 28, 2011. For these reasons, I find that the tenants were in breach of their fixed term tenancy agreement because they did not honour the terms of that agreement. As such, the landlord is entitled to compensation for losses he incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*.

There is undisputed evidence that the tenants have not paid rent for any of their fixed term tenancy. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises for January 2012. He did mitigate the tenant's losses for their fixed term tenancy renting out the premises to new tenants for

either \$3,600.00 as he first maintained or \$3,200.00 as he claimed later in this hearing. As such, I am satisfied that the landlord has discharged his duty under section 7(2) of the *Act* to minimize the tenants' loss.

I find that the changes in the landlord's testimony during the hearing combined with the total absence of any confirming documents, tenancy agreements, or receipts raise serious questions regarding the landlord's claim that he has suffered a loss as a result of the tenants' failure to abide by the terms of the fixed term tenancy agreement. The landlord changed his sworn testimony regarding the amount that the new tenants are paying in monthly rent. At the early stages of the hearing, he said that the new tenants were renting the same premises as had been rented by the tenants. Later in this hearing, he said that the tenants had rented the entire property while the new tenants were only renting the main floor of this rental property. At the hearing, he also changed the reason for seeking most of his requested monetary award. At the hearing, he asked for recovery of his loss of income for the basement suite due to the new tenant's refusal to assume occupancy of the entire rental property. Based on these changes in his testimony, I find that the landlord would have needed to present written evidence to support his claim that he has suffered losses arising out of this tenancy and to quantify those losses. As the landlord has failed to demonstrate that he has experienced losses arising out of this tenancy, I dismiss his application for a monetary award for loss of rent arising out of this tenancy without leave to reapply.

Based on the landlord's failure to provide any written evidence of receipts for his advertising costs that would demonstrate his actual losses, I dismiss his application for reimbursement for advertisements he placed to attract new tenants for the rental premises without leave to reapply.

As the landlord has been unsuccessful in his application, I dismiss his application to recover his filing fee.

As the landlord has failed to demonstrate entitlement to a monetary award, I dismiss his application to retain the tenants' security deposit. Since the landlord continues to hold the tenants' security deposit, I order the landlord to return the tenants' \$1,800.00 security deposit plus applicable interest forthwith. No interest is payable over this period.

### Conclusion

I dismiss the landlord's application for dispute resolution without leave to reapply. As the landlord's application to retain the tenants' security deposit has been denied, I order the landlord to return the tenants' \$1,800.00 security deposit forthwith. The tenants are

provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: February 24, 2012

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Residential Tenancy Branch