



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords for a monetary order for loss rent and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

### Issue(s) to be Decided

Are the landlords entitled to a monetary order for loss rent?

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The parties agree they entered into a one year fixed term tenancy agreement commencing June 15, 2011. Rent in the amount of \$850.00 was payable on the first of each month. A security deposit of \$425.00 was paid by the tenants.

The parties agree they added an addendum to the tenancy agreement dated September 20, 2011. Filed in evidence is a copy of the signed addendum.

The parties agree the rental unit was abandoned by the tenants on October 12, 2011.

The landlords are seeking compensation for loss of rent, unpaid utilities, and the cost to advertise the rental unit.

The landlord claims as follows:

a.	Loss of rent for November and December 2011	\$1,700.00
b.	Advertising	111.66
c.	Propane	218.00
d.	Hydro	17.00
	<b>Total claimed</b>	<b>\$2,046.66</b>

The female landlord testified that it was at the end of October 2011, when they discovered the rental unit was abandoned. It was not until the end of November 2011,

when she found a new address for the tenants and filed their application for dispute resolution, which provides notice to the tenant that she is seeking to recover loss of rent for breaching the fixed term tenancy agreement. The female landlord states they are seeking compensation in the amount of \$1,700.00 for November 2011 and December 2011, loss rent.

The male tenant testified that they abandoned the rental unit on October 12, 2011, because the rental unit was close to the train tracks and the noise from the trains was unbearable. The male tenant states that they knew that the trains went by the rental property when they entered into the tenancy agreement.

The male tenant further testified that clause three of the addendum to the tenancy agreement indicates they are not bound by the fixed term tenancy agreement, because they did not chose to rent to own the property and as a result of that they are not obligated to provide the landlord with any notice that they were moving from the rental unit.

The female landlord argued the property was for sale when the tenants entered into the tenancy agreement. Clause three of the addendum to the tenancy agreement states that the landlord will give the tenants two months notice to vacate the rental unit, if the tenants chose not to enter into a rent to own agreement and the property is sold to another person. The landlord states it does not give the tenants the right to breach the fix term agreement and to abandon the rental unit.

The female tenant testified they did the landlord a favour by abandoning the rental unit as her spouse was laid off from his job and they were unable to pay the rent and if they stayed in the rental unit the landlords would have had to evict them.

The female landlord testified that as soon as she was aware of the abandonment she listed the rental unit in two different local papers and on two different websites and they were able to rent the unit for February 1, 2012. The landlord stated that she is seeking to recover the \$111.66 in advertising fees. Filed in evidence are three receipts paid by the landlord to advertise the rental unit.

The male tenant testified that he has no objection to the amount the landlords are seeking to recover in advertising cost if he is required to pay the cost of advertising.

The female landlord testified that she is seeking to be compensated in the amount of \$218.00 for the propane the tenants used to heat the rental unit. The landlord states clause one of the addendum to the tenancy agreement shows the propane tank was at 55% when the tenants moved into the rental unit. The landlord stated that the propane tank was almost empty and they had to have the propane tank filled. Filed in evidence is a receipt for propane.

The male tenant testified that they never used the propane when they were in the rental unit and should not have to pay the cost for the propane.

The male landlord argued that fuel was consumed as the pilot light to the furnace was on when they entered the rental unit.

The female landlord testified that she is seeking to be compensated in the amount of \$17.00 for the hydro cost for the month of November 2011 and December 2011, as those were utilities that they would not have incurred if the tenants did not breach the fixed term tenancy agreement.

The male tenant testified that he has no objection to the amount the landlords are seeking to recover for hydro.

### Analysis

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

The evidence of the parties was that they entered into a fixed term tenancy, which was to end on June 14, 2012.

The evidence of the male tenant was conflicting. He first testified that they abandoned the rental unit due to the noise of the trains and later changes his testimony that they left without notice due to clause three in the addendum to the tenancy agreement.

The evidence of the female tenant was that they could not afford to pay rent as her spouse was laid off from his job and they left the rental unit, to avoid being evicted by the landlords.

I prefer the evidence of the female tenants, over the male tenants, as her evidence makes sense, that they were unable to pay rent, so they left the rental unit to avoid eviction.

The Residential Tenancy Act states - Tenant's notice

**45** (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(b) is **not earlier than the date specified in the tenancy agreement** as the end of the tenancy.

I find that the tenants have breached section 45 of the Act as the earliest date they could have legally ended the tenancy was June 2012, as stated in their tenancy agreement.

As the landlords did provide notice with intent to recover loss rent from the defaulting tenants in the form of their application and the landlords took reasonable steps to mitigate their loss by advertising in the local papers and posting the rental unit on websites. I find the landlords did suffer a loss and are entitled to be compensated for loss rent in the amount of \$1,700.00.

As a result of the tenants breaching the fixed term agreement, the landlords incurred additional costs by having to pay for advertising cost for the rental unit. Therefore, the landlords are entitled to compensation in the amount of \$111.66 for advertising costs.

The addendum to the tenancy agreement indicates the propane tank was at 55% percent when the tenants took possession of the rental unit. The evidence of the male landlord was that the furnace pilot light was on when they entered the rental unit. The landlords had the propane tank filled at the end of tenancy and have provided a receipt.

The Residential Policy Guideline stated that the tenants are responsible to leave the tank in the condition it was in at the start of tenancy and in this case 55% full. Therefore, the landlords are entitled to compensation in the amount of \$218.00 for the cost of the propane.

The evidence of the landlord was she was required to pay \$17.00 in hydro cost, which is an amount she would not have had to pay if the tenants did not breach the tenancy agreement. The male tenant's evidence was that he does not dispute \$17.00 for hydro cost. Therefore, the landlords are entitled to compensation in the amount of \$17.00 for hydro costs.

I find that the landlords have established a total monetary claim of **\$2,096.66** comprised of the above amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the deposit and interest of **\$425.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$1,671.66**.

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

### Conclusion

The landlords are granted a monetary order and may keep the security deposit as partial satisfaction of the claim, and are granted an order for the balance due.

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 20, 2012.

---

Residential Tenancy Branch