



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNR, FF

### Introduction

This hearing was convened by way of conference call in repose to the landlords application for a Monetary Order for unpaid rent or utilities; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to a Monetary Order for unpaid rent and utilities?

### Background and Evidence

Both parties agree that this tenancy was due to start on November 01, 2011 with an agreed occupancy date of October 29, 2011. Rent for this unit was also agreed at \$1,800.00 plus utilities per month and was due on the first day of each month. This was a fixed term agreement which was due to expire on October 29, 2012.

The landlord testifies that on September 24, 2011 the tenants came to view the property, the landlord states he had just purchased the property and would take possession of the property on October 28, 2011. The landlord testifies that the tenants agreed to rent the property and sent the landlord copies of their driving licences. The landlord testifies that he sent the tenants a copy of the tenancy agreement by fax and asked the tenants to sign and return it if they wanted to rent the property. The landlord testifies that both tenants did sign the tenancy agreement and faxed this back to the landlord who then also signed the agreement. This agreement has been provided in evidence.

The landlord testifies that a week before the tenants were due to move into the property the tenants contacted the landlord to ask if they could leave a van and boxes on the driveway. The landlord testifies that he had to refuse this request as the landlord did not take possession of the unit until October 28, 2011.

The landlord testifies that he asked the tenants for post-dated cheques for the rent and a cheque for the security deposit. The landlord testifies that the tenants did not provide these cheques to the landlord and kept saying they would do it but were working. The landlord testifies that he asked the tenants to meet the landlord at the property on October 29 to pay the post-dated rent cheques and security deposit but the tenants did not show up at that time. The landlord testifies that he made attempts to contact the tenants and eventually spoke to the tenants babysitter who informed the landlord that the tenants belongings were all still in their own house. The landlord testifies that on November 02, 2011 the landlord eventually made contact with this tenant who informed the landlord that they were not going to move into the property because the insurance

was too expensive. The landlord testifies that he asked the tenant why he did not let the landlord know this sooner and states the tenant just said sorry.

The landlord states that the tenants entered into a legally binding contract with the landlord to rent the property when they signed and returned the tenancy agreement to the landlord on October 17, 2011. The landlord testifies that he had to place advertisements on an internet site and in the local newspaper to attempt to re-rent the property. The landlord has provided evidence showing the dates payments were made for the newspaper advertisements. The landlord testifies that it was difficult to re-rent the property at that time of year and there were only a few viewings made for the property. The property was not re-rented until March 01, 2012. The landlord seeks to recover the sum of \$7,200.00 in lost rent from November, 2011 to February, 2012.

The landlord also seeks to recover the cost of advertisements for the property as this was a cost he would not have incurred had the tenants not breached the tenancy agreement. The landlord seeks to recover the sum of \$120.51.

The landlord testifies that he had to continue to heat the house at a low heat through the winter months. The landlord testifies as the tenants broke the terms of the tenancy agreement they are responsible for this cost and the landlord has provided copies of the utility bills in evidence. The landlord seeks to recover the sum of \$866.25 for the period the house stood empty.

The landlord also seeks to recover the \$100.00 filing fee paid for this application from the tenant. The landlord states he had originally applied for \$10,000.00 however the landlord has adjusted his claim to \$8,286.76.

The tenant disputes the landlords claim. The tenant testifies that there was never a lease agreement between the parties. The tenant testifies he has a fax from the landlord that states that the landlord asked the tenants to sign the lease and the landlord would only sign it when the tenants had paid their rent, provided post-dated rent cheques for

the following year and paid a security deposit. The tenant testifies that as no money ever exchanged hands and the landlord had not signed the lease and did not send the tenants a copy of the signed lease then the lease agreement is invalid. The tenant has provided a copy of the tenancy agreement signed by both tenants in evidence but has not provided a copy of the alleged fax from the landlord.

The tenant testifies that he sent the landlord a letter informing the landlord that they had changed their minds and were now going to stay in Alberta. The tenant has not provided a copy of the alleged letter to the landlord in evidence.

The tenant disputes the landlords claim for heating costs. The tenant states as there was no binding lease agreement in place between the parties, then the tenants cannot be held responsible for any utility bills. The tenant testifies that he did inquire about putting the utilities for this property into their names but did not send the contract back to the utility company.

The tenant testifies that they changed their minds about renting the property because they had a bad feeling about moving into the house.

The tenant declares that the address on the landlord's application is the tenants mailing address.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. The landlord argues that the tenants did sign the tenancy agreement and in doing so the tenant entered into an agreement with the landlord to rent this property for a monthly rent of \$1,800.00. The tenant argues that although they did sign the agreement it did not become binding until they paid rent and a security deposit. It is my decision that the tenants did sign the tenancy agreement on October 17, 2011 to rent this property for a monthly rent of \$1,800.00 starting on November 01, 2011 and ending

on October 29, 2012. Regardless of whether or not any money exchanged hands by signing this agreement the tenants entered into a valid tenancy agreement. Section 7 of the Act states:

**Liability for not complying with this Act or a tenancy agreement**

**7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I find that the landlord made every attempt to re-rent the unit to minimize their loss and as such have incurred a loss of revenue for the period of November, 2011 to March, 2012 of \$7,200.00. The Residential Tenancy Policy Guidelines #3 deals with the loss of rent and states when a tenant breaches a fixed term tenancy agreement, a landlord is entitled to damages at an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

Consequently, I find the tenants have breached the tenancy agreement with the landlord and as such the landlord is entitled to recover the loss of revenue from the tenants for the sum of **\$7,200.00** and will receive a monetary award for this sum pursuant to s. 67 of the *Act*.

I have considered the landlords claim for utilities as the tenants would have been responsible for these costs had the tenancy commenced. As the tenants breached the agreement with the landlord to rent this property I find it is reasonable for the landlord to

heat the house at a minimum temperature in order to protect the house through the winter months. The landlord has provided sufficient evidence to show the actual loss in this matter. However, I have calculated the utility bills for the period from October 29, 2011 to February 29, 2012 I find there is a discrepancy in the landlord's calculations. The landlord has calculated the sum of \$866.25 and I find the actual calculation to be \$852.36 as I have not calculated any late charges the landlord would incur by paying these bills past their due date. I find therefore that the landlord is entitled to be compensated for this loss to the sum of **\$852.36** pursuant to s. 67 of the *Act*.

I have considered the landlord claim to recover the costs incurred for advertising the property. It is my decision that the landlord had to advertise the property again in order to re-rent it as quickly as possible to mitigate the loss in this matter. Consequently, the landlord incurred additional costs in advertising the property which the landlord has established at \$120.51. I find therefore that the tenants are responsible for these costs and the landlord is entitled to a monetary award to the sum of **\$120.51** pursuant to s. 67 of the *Act*.

As the landlord has been successful with the revised claim I find the landlord is entitled to recover the **\$100.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*. The landlord will receive a Monetary Order for the following sum:

Loss of rental income	\$7,200.00
Utility charges	\$852.36
Advertising costs	\$120.51
Filing fee	\$100.00
<b>Total amount due to the landlord</b>	<b>\$8,272.87</b>

### Conclusion

I HEREBY FIND in favor of the landlord's revised monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$8,272.87**. The order must be served on the respondent and is enforceable through the Provincial Court as an order 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: May 25, 2012.

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Residential Tenancy Branch