



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened in response to applications by landlord and the tenants.

The landlord's application is seeking orders as follows:

1. A monetary order for unpaid rent;
2. A monetary order for loss under the Act; and
3. To keep all or part of the pet deposit and security deposit.

The tenants' application is seeking orders as follows:

1. Return all or part of the pet deposit and damage deposit.

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

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to a monetary order for loss under the Act?

Is the landlord entitled to keep all or part of the pet deposit and security deposit?

Are the tenants entitled to the return of all or part of the pet deposit and damage deposit?

### Background and Evidence

The parties entered into a one year month fixed term tenancy agreement on May 30, 2011. Rent in the amount of \$900.00 was payable on the first of each month. A security deposit of \$450.00 and a pet deposit of \$450.00 were paid by the tenants. Filed in evidence is a copy of the tenancy agreement.

On March 4, 2012, the tenants were served with a one month notice to end tenancy for cause with a vacated date of March 31, 2012. The tenants accepted the notice and

move-out of the rental unit on the date indicated in the notice. Filed in evidence is a copy of the notice to end tenancy for cause.

Landlord's application

The landlord claims as follows:

a.	Loss revenue for April, May, 2012 (half month)	\$1,350.00
b.	Unpaid utilities for March, April, May	225.00
	<b>Total claimed</b>	<b>\$1,575.00</b>

The landlord testified as a result of the tenants breaching the fixed term tenancy agreement. The landlord is seeking compensation for loss of revenue for April 2012 and half of May 2012.

The landlord testified on March 4, 2012, she advertised the unit for rent in an advertisement posted on a popular local website. The landlord stated on March 24, 2012, she posted another advertisement on another popular local website. The landlord stated she was able to rent the unit for May 15, 2012. The landlord is seeking compensation for loss of revenue for April 2012, and a portion of May 2012, in the amount of \$1,350.00.

The landlord testified that under the terms of the tenancy agreement the tenants are required to pay half of the cable bill, the landlord is seeking unpaid cable for the month of March, April and May 2012.

The tenants testified that the tenancy ended by mutual agreement on March 31, 2012, and they should not be responsible for the landlord's loss of revenue.

The landlord argued that there was no mutual agreement to end the fixed term tenancy agreement.

The tenants testified the landlord has not provided any copies of the cable bill and they have requested on several occasion for a copy to ensure they are only paying half of the bill as required by the tenancy agreement.

### Tenant's application

The tenants write in their application that the landlord did not participate in a move-out inspection. As a result, the tenants testified that they are entitled to the return of doubled the security deposit and pet deposit.

### Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard.

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

As the parties have filed cross applications each party has the burden of proof to prove a violation of the Act and a corresponding loss.

### Landlord's application

The parties agreed a one year fixed term tenancy agreement was entered into on May 30, 2011. The tenancy ended on March 31, 2012, in accordance with a notice to end tenancy for cause issued by the landlord.

The evidence of the tenants was it was a mutual agreement to end tenancy. The evidence of the landlord was she did not end the tenancy by mutual agreement.

In this case there is a signed fixed term agreement. There is no written agreement that would suggest the landlord ended the tenancy by mutual agreement. The tenancy ended as a result of the tenants accepting a notice to end tenancy for cause. Accepting that notice does not mean the tenancy ended by mutual agreement.

As the tenancy ended due to actions of the tenants breaching the material terms of the tenancy agreement, the landlord did suffer a loss of revenue.

The evidence of the landlord was she immediately advertised the rental unit in a classified add on a popular local website, and was able to rent the unit for May 15, 2012, under a new fixed term tenancy agreement. I find that the landlord took reasonable steps to minimize the loss. Therefore, I find the landlord is entitled to recover loss of revenue for April 2012, and a portion of May 2012, in the amount of **\$1,350.00**.

The evidence of the landlord was the tenants did not pay their portion of the cable bill. The evidence of the tenant was they have never seen a cable bill and feel they were paying more than required under the tenancy agreement. The landlord has not filed in evidence any copies of the cable bill. I find the landlord has provided insufficient evidence to prove the actual amount required for compensation. Therefore, the landlords claim for compensation for unpaid utilities is dismissed.

#### Tenants' application

The tenants are seeking the return of double the security deposit and pet the deposit.

#### **Section 38 of the Act - Return of security deposit and pet damage deposit states:**

- 38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
- (a) the date the tenancy ends, and
  - (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:
  - (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
  - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit

The landlord had the right to apply to retain the security deposit and pet deposit for any claim relating to unpaid utilities and loss of revenue. The landlord made an application for dispute resolution within fifteen days of tenancy ending as required by the Act.

As, I have found the landlord is entitled to compensation for loss of revenue. The tenants' application for return of the double the security deposit is dismissed.

I find that the landlord has established a total monetary claim of **\$1,400.00** comprised of loss of revenue and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit of \$450.00 and a pet deposit of \$450.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$500.00**.

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

Conclusion

The tenants' application is dismissed.

The landlord is granted a monetary order and may keep the security deposit as partial satisfaction of the claim, and is 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: June 04, 2012.

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Residential Tenancy Branch