



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNR, MNSD, FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties were represented at the conference call hearing.

### Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The salient facts are not in dispute. The tenancy began on July 1, 2011 at which time the tenants paid a \$375.00 security deposit and a \$200.00 pet deposit and it was set to run for a fixed term, ending on June 30, 2012. The tenant advised the landlord that he would be ending the tenancy prior to the end of the fixed term and although the exact date on which the tenancy would end changed several times, April 30 was finally set as the last day of the tenancy.

At the beginning of the tenancy, the tenants signed a document entitled "Rental Incentive Agreement" under which they were to be compensated with a monthly rental incentive of \$62.00 per month, which was applied toward their monthly rent. The document provides in part that all lease incentives agreed upon during the lease term would be due and payable to the landlord if the tenants broke the lease within the lease period. As the tenants ended the tenancy after just 10 months of the tenancy, the landlord seeks to recover \$620.00, which represents the monthly incentives credited to the tenants.

The tenancy agreement contains a liquidated damages clause which provides that should the tenants end the tenancy in less than 6 months, they would be liable for \$350.00 in liquidated damages. The landlord seeks an award of \$350.00 pursuant to this term.

The tenant who appeared at the hearing and represented both tenants argued that the landlord had suffered no loss of revenue and that the landlord had breached the terms of the tenancy agreement during the tenancy by failing to provide adequate heat for a short period. The tenant also argued that although he had paid rent for the entire month of April, the landlord asked the tenant to vacate the unit by April 28 as new tenants wanted access to the unit at that time. The tenant testified that he complied with the landlord's request, although it was inconvenient, and as a result, incurred more than \$700.00 in costs associated with the early move.

### Analysis

I find that the tenants were bound by a fixed term tenancy agreement and did not have the right to end the tenancy prior to the end of the fixed term. Although the landlord may have failed to provide adequate heat during part of the tenancy, the tenants did not formally end their tenancy as a result and if this failure occurred, and I make no finding on that issue, this did not relieve the tenants of their obligation to fulfill the lease. Although the landlord may not have suffered loss of income, and I make no finding on that issue, the claim does not address loss of income and I find this part of the tenant's argument to be irrelevant. The tenant is free to file a claim against the landlord for any losses he suffered.

I find the provision in the Rental Incentive Agreement which requires the tenants to repay monies if the tenancy is ended early to be enforceable and I find that the landlord is entitled to recover \$620.00 and I award him that sum.

Because the liquidated damages clause is only triggered if the tenancy is ended within 6 months, I find that the tenants are not liable for liquidated damages and I dismiss the claim.

As the landlord has been at least partially successful, I award him the \$50.00 filing fee paid to bring his application.

### Conclusion

The landlord has been awarded a total of \$670.00. I order the landlord to retain the \$375.00 security deposit and a \$200.00 pet deposit in partial satisfaction of the claim and I grant him a monetary order under section 67 for \$95.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced 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: July 26, 2012

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Residential Tenancy Branch