



# 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 dealt with an Application for Dispute Resolution filed by the Landlords on October 3, 2012 for a Monetary Order for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

Should the Landlord be awarded a Monetary Order?

### Background and Evidence

The undisputed testimony was that the parties entered into a month to month tenancy that began on August 1, 2010 for the monthly rent of \$1,000.00 and the Tenants paid \$500.00 for the security deposit. The tenancy ended as of June 23, 2011 when the Landlord was granted an Order of Possession and the Tenants continued to remain in the unit until August 4, 2011.

The parties attended previous dispute resolution hearings during which the Landlords were granted monetary orders for unpaid rent and filing fees up to the end of July 2011 and the Tenants were awarded double their security deposit plus filing fees.

During this hearing both parties acknowledged that they had previously understood that the security deposit would be put towards August 2011 rent. However, when the Tenant was finalizing all of his matters through the *Residential Tenancy Branch* it was recommended that he seek the return of double his deposit because their previous agreement was not arranged in accordance with the *Act*.

The Landlord is now seeking compensation for use and occupation and lost rent for the entire month of August 2011 in the amount of \$1,000.00. She argued that the Tenants remained in the unit until August 4, 2011 and therefore she could not find a new tenant to occupy the unit until September 1, 2011.

The Landlord submitted documentary evidence which included, among other things, copies of: her written statement; Canada Post receipts; corrected Order of Possession dated July 19, 2011; e-mails and letters to and from the Tenants; a bailiff receipt; and the tenancy agreement from her new tenant which was effective September 1, 2011.

The Tenant submitted documentary evidence which included, among other things, copies of: their written statement; and a copy of the September 4, 2012 decision.

### Analysis

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

The evidence supports the tenancy ended on June 23, 2011 by issuance of an Order of Possession granted to the Landlord; however, the Tenants remained in the unit overholding until August 4, 2011.

The Landlord claims for unpaid rent of \$1,000.00 for August 2011 however I find that because this tenancy ended June 23, 2011, the Landlord is seeking use and occupancy for August 1 – 4, 2011 and loss of rent for August 5 – 31, 2011.

The rental unit was not re-rented until September 1, 2011 which caused the Landlord to suffer a loss for the entire month of August 2011 due to the Tenants' over holding and their breach of the *Act*. Therefore, I find the Landlords have proven the test for loss and I approve their claim of \$1,000.00.

The Landlords have succeeded with their application, therefore I award recovery of the \$50.00 filing fee.

Conclusion

The Landlords have been awarded a Monetary Order in the amount of **\$1,050.00**. This Order is legally binding and must be served upon the Tenants.

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: December 27, 2012.

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Residential Tenancy Branch