



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation for loss – Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The tenancy started on April 1, 2012 on a fixed term to March 31, 2013. The Tenants ended the tenancy and moved out of September 30, 2012. Rent of \$2,500.00 was payable monthly and at the outset of the tenancy the Landlord collected \$1,250.00 as a security deposit. The Parties agree that the Tenants owe \$1,250.00 pursuant to Section 3 of the tenancy agreement that requires the Tenants to pay this amount as a “termination fee”.

The Landlord states that the unit was advertised for rent on September 9, 2012 after an agreement was entered into between the owner of the unit and the Landlord to obtain new tenants. The Landlord states that this agreement was entered into on September

7, 2012. The Landlord states that this is their only function and that they are not contracted to act as agent for any other tenancy matters. The Landlord states that the unit was advertised on the Landlord's website as well as craigslist and kijiji. The Landlord states that although the unit was initially listed for \$2,500.00 per month, this amount was reduced to \$2,300.00 on October 10, 2012 on the instruction from the owner. The Landlord provided a print out of the advertisement. The Landlord claims lost rental income of \$1,250.00 for October 2012 and additional lost rental income of \$200.00 per month for the period November 2012 to March 2013 inclusive in the total amount of \$1,000.00

The Tenants state that throughout the tenancy they only dealt with a third party (the "Agent"), not named in this application, and that they believed this person to be the owner. The Tenants state that on August 22, 2012 they verbally informed this Agent that they would have to end their tenancy by September 30, 2012 for financial reasons and that the Agent agreed to accept the end without holding the Tenants responsible to the end of the lease. The Tenants provided an email to the Agent dated August 22, 2012 to this effect. The Tenants state that they relied on this agreement to enter into a tenancy agreement at a different location. The Tenants state that had the Agent refused, they would have remained in the unit until the end of the term.

The Tenants states that they did not hear from the Agent until they called him in the middle of September 2012 to arrange a move-out inspection. The Tenants state that the Agent expressed surprise as though the Agent had forgotten about the end of the tenancy and that the Agent told them that as he was out of the country he would not be available for a move-out inspection. The Tenants state that they heard nothing more until they were contacted by another person on October 6, 2012 to conduct a move-out inspection. The Landlord confirms that this person was hired by the owner to conduct the inspection. The Landlord confirms that they have no knowledge of any agreement between the Agent and the Tenants in relation to responsibility for the rent to the end of the term.

The Tenants state that they do not believe that the unit was advertised in September 2012 and point to discrepancies in the print-out submitted by the Landlord as evidence of advertising the unit. The Tenants state that this print-out puts the available date of the unit at September 12, 2012 while the Tenants were still in the unit. The Tenants argue that the Landlord has not provided sufficient evidence of advertising and that the landlord failed to act sufficiently early to find new tenants.

The Tenants provided an email from the Landlord's agent acknowledging that he said "ok" to their notice to end the tenancy. It is noted that this email also includes the Agents denial that the Tenant would not be held responsible for any lost rental income.

The Landlord states that the Tenants failed to clean the unit and the carpet at move-out and claims \$275.00 for this cost. The Landlord provided a receipt for the cost of carpet cleaning in the amount of \$248.48. The Landlord states that the tenancy agreement requires professional cleaning of the carpet at the end of the tenancy. The Tenants agree that the carpet was not cleaned and state that it was not dirty other than regular wear and tear. The Tenants state that the unit was cleaned at move out.

### Analysis

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that costs for the damage or loss have been incurred or established and that steps were taken by the claiming party to minimize or mitigate the costs claimed. Given the lack of a cleaning receipt, I find that the Landlord has failed to establish that costs were incurred and I therefore dismiss this claim.

As the Agent dealt with the Tenants on matters related to the tenancy, I find that the Agent acted as landlord during the tenancy and had authority to amend or otherwise agree to changes in the tenancy agreement. Based on the Tenants' undisputed evidence that the Agent agreed to accept the end of the tenancy without further cost to

the Tenants, and noting the email that confirms at least such an initial agreement supporting the Tenant's evidence of reliance on the agreement, I find that the tenancy agreement was ended on September 30, 2012 with no further rent liability for the Tenants. I find therefore that the Landlord has failed to substantiate on a balance of probabilities that the Tenants are liable for lost rental income and I dismiss this claim.

Section 6 of the Act provides that a term of a tenancy agreement is not enforceable if the term is inconsistent with this Act or the regulations. Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean. I find that this standard is to be applied in determining the Tenants obligation at the end of the tenancy. I find that the term in the tenancy agreement requiring professional cleaning to set a higher standard than that contemplated by the Act and is therefore inconsistent with the Act and not enforceable. Generally, a tenant will be required to clean a carpet after a year however this time frame is shortened where there is greater than reasonable wear and tear to the carpet. As the tenancy was only 6 months and as the Landlord did not provide evidence to dispute the Tenant's evidence of reasonable cleanliness of the carpet, I find that the Landlord has failed to establish that the Tenant caused any loss to the Landlord and I dismiss this claim.

Given the agreement of the Parties, I find that the Landlord has established an entitlement to **\$1,250.00** for the termination fee. As the Landlord's claim has been otherwise unsuccessful, I decline to award recovery of the filing fee. Setting the security deposit of \$1,250.00 plus zero interest off the entitlement leaves nothing owing to the Landlord.

### Conclusion

I Order the Landlord to retain the security deposit of \$1,250.00 in full satisfaction of the claim.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 21, 2013