



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Code MNR, MND, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords for a monetary order for unpaid rent, or compensation for loss under the Act, and an order to retain the security deposit in partial satisfaction of the claim.

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 at the hearing.

### Preliminary issue

At the outset of the hearing the tenants notified the parties that they have legally changed their names. Filed in evidence for each tenant is a certificate of name change issued by vital statistics agency. As a result, the style of cause was amended to include the tenants change in name.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent?  
Are the landlords entitled to monetary compensation for damages?  
Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The parties entered into a fixed term tenancy which began on June 1, 2012 and was to expire on May 31, 2013. Rent in the amount of \$2,700.00 was payable on the first of

each month. A security deposit of \$1,350.00 and a pet damage deposit of \$500.00 were paid by the tenants. Filed in evidence is a copy of the tenancy agreement.

The landlords testified that the tenants' cheque for December 2012, was returned for insufficient funds. The landlords stated they called their property management company on December 22, 2012, and they discovered that the tenants vacated the unit on December 3, 2013. The landlords stated that the tenants have breached the fixed term agreement and they seek to recover loss of rent for December 2012, January and February 2013, in the amount of \$7,250.00.

The landlords testified that they have had two property management companies and that they have "no idea" what efforts the property management company did to re-rent the unit. The landlords stated they were presented with two potential tenants in December 2012 and neither was found acceptable. The landlords stated a new tenant was found for March 1, 2013.

The tenants testified that they sent a letter to the landlord on August 22, 2012, seeking permission to sublease as they wanted to vacate the rental unit towards the end of November. The tenants stated they completed the move-out condition inspection on December 3, 2013 and vacated the unit. Filed in evidence is the letter dated August 22, 2013. Filed in evidence is a copy of the move-out condition inspection report.

The tenant stated that they had received permission to sublease and they made attempts to re-rent the unit. The tenant stated they had potential tenants for the rental unit and they were approved by the property management company and that the new tenant was to receive the keys on December 30, 2012, however, when the new tenant went to get the keys, they were told by the property management company that the owners had changed their mind and no longer wanted to rent the unit. Filed in evidence are several emails between the tenants, the prospective tenant, and the property management company. Filed in evidence is a text messages from the prospective tenant dated December 30, 2012.

The tenants testified at the end of December 2013, they were informed by the property management company that they are no longer representing the owners of the property. The tenants stated they were also told that the landlord was unsure if they wanted to continue renting. The tenants stated they received no further information unit March or April 2013.

### 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, that is, a balance of probabilities.

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

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

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlords have the burden of proof to prove their claim.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 26 of the Residential Tenancy Act states:

*26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

The evidence of the landlords was that the tenants rent cheque for December 2012, rent was return for insufficient fund, and that they failed to pay any rent for December, 2012.

In this case, the tenants had legal possession of the rent on December 1, 2012, when rent was due under the terms of the tenancy agreement. As a result, I find the tenants have breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlords. Therefore, I find the landlord is entitled to compensation for unpaid rent for December 2012, in the amount of **\$2,700.00.**

Section 45 of the Residential Tenancy Act states:

*45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*  
*(a) is not earlier than one month after the date the landlord receives the notice,*  
*(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*

*(c) is the day before the day in the month, or in the other period on which the tenancy is based,*

In this case, the evidence of the tenants was that they gave notice on August 22, 2012, to end the tenancy. However, under the Act the tenants were not entitled to give notice to end the tenancy prior to the date specified in the tenancy agreement. I find the tenants have breach section 45(2) of the Act as the earliest date they could have legally ended the tenancy was May 31, 2013.

As a result of the tenants not complying with the terms of the tenancy agreement or the Act the landlords suffered a loss of rent for January and February 2013. The landlords are entitled to an amount sufficient to put the landlords in the same position as if the tenants had not breached the tenancy agreement or Act. This includes compensating the landlords for any loss of rent up to the earliest time that the tenants could have legally ended the tenancy.

However, under section 7(2) of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss. The duty begins when the party entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will have an effect on the outcome, when claiming for compensation of loss.

In this case, the evidence of the landlords was that they have “no idea” what efforts were made to re-rent the unit, as they had hired two property management companies. The landlords stated they were only presented with two potential tenants in December 2012 and neither was acceptable.

In this case, I find the landlords have provided insufficient evidence to support that they took reasonable steps to minimize the loss. At the very least, I would have expected that the landlords would have had a representative from the property management companies to provide testimony on what efforts were made, since the landlords had “no idea” or alternatively that the landlords would have requested that information from the property management companies by obtaining copies of their files to present as evidence to support their claim.

As a result, I find the landlords have failed to prove that they took reasonable steps to minimize the loss. Therefore, I find the landlords are not entitled to recover loss of revenue for January and February 2013.

I find that the landlords have established a total monetary claim of **\$2,700.00** comprised of the unpaid rent for December 2012.

I order that the landlords retain the security deposit of **\$1,350.00** and pet deposit of **\$500.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 for the balance due of **\$850.00**.

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

Conclusion

The landlords are granted a monetary and may keep the security deposit and pet damage deposit in partial satisfaction of the claim and the landlords are granted a formal 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 13, 2013

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Residential Tenancy Branch

