



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC FF

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The landlord applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

An agent for the landlord (the "agent"), a witness for the landlord, and the five tenants appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally and respond to the testimony of the other party.

The parties agreed that they received the evidence package from the other party and had the opportunity to review the evidence prior to the hearing. I find the parties were served in accordance with the *Act*.

### Issue to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

### Background and Evidence

A fixed term tenancy agreement began on September 1, 2012 and expired on April 30, 2013. According to the written tenancy agreement between the parties and submitted in evidence, the tenants were required to provide vacant possession of the rental unit on April 30, 2013. Monthly rent in the amount of \$2,300.00 was due on the first day of each month. A security deposit of \$1,150.00 was paid by the tenants at the start of the tenancy.

The landlord is claiming \$2,300.00 in compensation for the loss of May 2013 rent due to the tenants allegedly leading the landlord to believe that the tenants would be staying another year.

The agent presented witness LW. Witness LW testified that when the tenant came to pay the rent on April 2, 2013, tenant JC asked to speak with the agent about renewing their lease. Witness LW stated that she was unsure whether the agent was supposed to contact the tenants, or the tenants were supposed to contact the agent. Tenant JC stated that he spoke with LW in early April 2013, as he wanted to speak to the agent about whether the landlord would approve dropping the rent. Tenant JC stated that he was advised by LW that the agent would call him back, and that he did not receive a call back from the agent. The agent stated that she or her staff are in the office regularly and are available via e-mail also. The parties confirmed that e-mail communication was their regular method of communicating.

The agent testified that she wrote an e-mail to the tenants on April 5, 2013, advising them that their new lease was ready to sign. The parties agreed that the tenants advised the landlord on April 17, 2013 by e-mail that they will be moving out at the end of April as per the terms of their lease. The agent stated that they began to advertise the rental unit as of April 17, 2013, however, were not successful in re-renting the rental unit for May 2013. The agent stated that on June 29, 2013, the landlord moved back into the rental unit.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Analysis

Based on the documentary evidence, the oral testimony of both parties, and on the balance of probabilities, I find the following.

### Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;

2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In the matter before me, there is no dispute that the tenancy agreement was a fixed term tenancy that was to end on April 30, 2013 and of which, required the tenants to provide vacant possession of the rental unit to the landlord on April 30, 2013. The landlord is seeking \$2,300.00 for loss of rent for May 2013, due to the tenants allegedly misleading the landlord as to whether the tenants would be renewing their lease. The agent confirmed that she did not follow up with the tenants after sending an e-mail to the tenants on April 5, 2013, and did not receive a reply from the tenants until she received their e-mail reply on April 17, 2013.

The agent stated that she was advised by witness LW that the tenants wanted a new lease. The tenants provided an equally probable version of events, which was that the tenants wanted to ask the agent a question about a possible rent reduction before they could confirm whether they would sign a new lease and that they did not receive a call back from the agent.

**I find** that landlord has not met the burden of proof to prove that the tenants violated the *Act*, regulation or tenancy agreement. There was no signed tenancy agreement that extended the tenancy beyond the end date of the fixed term tenancy agreement, which was April 30, 2013. At the very least, the landlord or the landlord's agent should have determined whether the tenants were willing to enter into a new tenancy agreement by having a direct conversation with the tenants versus relying on a conversation that the tenants had with witness LW, a portion of which was disputed by the tenants. **I find** the agent incorrectly assumed that the tenants wanted a new lease and prematurely sent a

new lease to the tenants without confirming any details of a new lease. **I find** that by failing to contact the tenants between April 5, 2013 and April 17, 2013, the landlord failed to do what was reasonable to minimize their loss. Therefore, the landlord should have begun their attempts to advertise the rental unit sooner than April 17, 2013. **I find** that without a new agreement being signed between the parties, the original fixed term tenancy agreement ending April 30, 2013 was the only agreement in effect and was the only agreement that can be enforced as a result.

Based on the above, **I find** that the landlord has failed to prove that the tenants violated the *Act*, regulation or tenancy agreement. **I dismiss** the landlord's claim in full due to insufficient evidence, without leave to reapply.

As the landlord was not successful with her claim, I **do not** grant the landlord the recovery of the filing fee.

#### Conclusion

I dismiss the landlord's application due to insufficient evidence, without leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: August 30, 2013

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Residential Tenancy Branch

