



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, RR, OPB, MNSD, MNR

### Introduction

This hearing dealt with an application by the landlord seeking a monetary order for money owed or compensation for damage or loss suffered under the Act, the regulation or the tenancy agreement, and an order to retain the security deposit in partial satisfaction of the claim. The tenants have filed an application seeking a monetary order for money owed, compensation for damage or loss suffered under the Act, the regulation or the tenancy agreement. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

### Issues to be Decided

Is either party entitled to any of the above under the Act, the regulation or the tenancy agreement?

### Background and Evidence

The tenancy began on or about September 1, 2012 for a fixed term of six months and then on a month to month basis. Rent in the amount of \$5500.00 is payable in advance on the first day of each month during the fixed term portion of the agreement; the rent was then reduced to \$4000.00 on the month to month agreement. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$2500.00.

The landlord gave the following testimony:

The landlord stated that at the conclusion of the six month fix term, he and the tenant agreed to another six month extension. The landlord stated that the tenant agreed with the new terms by e-mail in early January 2013. The landlord stated that on March 15, 2013 the tenant gave written notice to move out. The landlord stated they moved out on April 30, 2013. The landlord stated that he has yet to rent the unit and is seeking lost revenue for the months of May – August for a total claim of \$16000.00. The landlord is also seeking to retain the security deposit.

The tenants gave the following testimony:

The tenants stated that they had not agreed to the six month extension as claimed by the landlord. The tenants stated that they had initially agreed to give two months notice of vacating the unit by e-mail. Later, the tenants became informed that they had not been required to give the two months notice as requested by the landlord. The tenants stated that the landlord has put the home for sale and have made no efforts to rent the unit. The tenants stated that due to the landlords' actions they felt compelled to file their own application for deficiencies at the start of the tenancy. The tenants stated that the previous tenant had not moved out on time and that the subject tenants had to assist in moving her out. The tenants also stated that the unit was not cleaned sufficiently and that the previous tenant had left many belongings behind in the home and in the garage. The tenants are seeking \$900.00 for the loss of use of space in their accommodations during the first week of their tenancy. The tenants feel the landlord should return the security deposit.

### Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, both parties must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The landlord has a responsibility to maintain accurate and complete documentation. The subject landlord did not conduct move in or move out condition inspection reports and did not have the parties sign a new agreement as required. I do not agree with the landlords' position that an e-mail is a sufficient contract. It is worth noting, that even if I had accepted the e-mail as a new tenancy agreement, the landlord did not make any attempts to mitigate his losses. The landlord put the house up for sale and gave testimony "it's difficult to rent a house that's for sale". The landlord did not make any efforts to mitigate the matter, he in fact complicated it. I find that the tenants gave appropriate notice as required by the Act. In addition, the landlord is not entitled to make a claim for the security deposit. The landlord stated that he did not conduct a move in or move out inspection report and as such extinguishes his right to make a claim for the security deposit as prescribed Section 24(2) of the Act. The landlord is to return the deposit to the tenants. The landlord has not been successful in his application.

The tenants have also failed to satisfy me of their claim. When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The tenants stated that they had independent witnesses that could confirm their claims however none of those witnesses participated in the hearing. The tenants did not provide any documentation to support their "loss of use". The tenants have not been successful in their application.

When questioned about each other's oral testimony, both parties would offer a version of the event and then later change details and contradict themselves. I found both parties to be contradictory in their evidence and unreliable. Based on the above and on a balance of probabilities I dismiss both parties application in its entirety.

As neither party has been successful I decline to award either party the recovery of their filing fee.

### Conclusion

The landlord's application is dismissed. The landlord must return any security deposit that they are holding.

The tenant's application is dismissed.

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: August 21, 2013

---

Residential Tenancy Branch