



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the landlords: MNR FF

For the tenants: MNDC MNSD FF

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”). The landlords applied for a monetary order under the *Act*, and to recover their filing fee. The tenants applied for a monetary order under the *Act*, and to recover their filing fee.

The landlords and the tenants attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

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

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.

### Preliminary and Procedural Matters

During the hearing, the tenants’ application was amended to include a claim towards the security deposit as I find that the tenants’ application clearly included details which indicated that they were seeking the return of their security deposit. As a result, I have permitted the tenants’ application to be amended to include a request for the return of

their security deposit. This amendment does not prejudice the landlords as the tenants' application clearly indicated that the tenants were seeking the return of their security deposit.

### Issues to be Decided

- Is either party entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

### Background and Evidence

A fixed term tenancy agreement began on or about June 15, 2012 and was to expire on July 31, 2013. Monthly rent in the amount of \$3,850.00 was due on the first day of each month and included a fully furnished rental unit as part of the tenancy agreement. The tenants paid a security deposit of \$1,925.00 at the start of the tenancy.

The landlords are seeking \$7,543.28 comprised of the following:

Item Description	Amount Claimed
1. Loss of rent between April 2013 and June 2013	\$2,870.10
2. Loss of rent for July 2013	\$3,850.00
3. Tenant placement fee	\$768.60
4. Advertising costs	\$54.58
<b>TOTAL</b>	<b>\$7,543.28</b>

The tenants are seeking \$8,675.00 comprised of the following:

Item Description	Amount Claimed
1. Return of security deposit	\$1,925.00
2. Return of June 2012 rent	\$2,900.00
3. Return of July 2012 rent	\$3,850.00
<b>TOTAL</b>	<b>\$8,675.00</b>

The parties confirmed that the tenants provided written notice dated July 31, 2012, a little more than one month after moving into the rental unit, that they would be vacating the rental unit effective September 1, 2012. The tenants stated that they vacated the

rental unit on August 22, 2012. The landlords stated that the tenants vacated the rental unit on August 24, 2012. There was no dispute that to minimize the loss to the landlords, new tenants moved into the rental unit on or about August 25, 2012.

The July 31, 2012 written notice from the tenants to the landlords reads in part:

“We are writing to advise that we have to end our tenancy of your property earlier than planned. This is due to [name of son]’s kindergarten placement for September, which has unfortunately been made out of the catchment area. Due to our working patterns and commute, we just can’t make the logistics of [name of rental unit road] work for us going forward.

We have the opportunity to secure another property from 1 September, and so we are giving notice that ideally we wish to cease the tenancy from that date. We understand that we will need to pay you liquidated damages of \$1,900 to cover your costs, and we will fully participate in securing you a new tenant for the property and minimise any inconvenience to you...”

[reproduced as written]

The tenants agreed during the hearing that they surrendered their security deposit of \$1,925.00 towards the \$1,900.00 liquidated damages term #5 of the tenancy agreement. Term #5 of the fixed term tenancy agreement reads in part:

**“5. LIQUIDATED DAMAGES.** If the tenant ends the fixed term tenancy, or is in breach of the Residential Tenancy Act or a material term of this Agreement that causes the landlord to end the tenancy before the end of the term...or any subsequent fixed term, the tenant will pay the landlord the sum of \$1,900.00 as liquidated damages and not as a penalty. Liquidated damages are an agreed pre-estimate of the landlord’s costs of re-renting the rental unit and must be paid to the unit or residential property.”

The tenants stated that although they initially agreed to surrender their security deposit towards the liquidated damages costs, they are now seeking the return of their security deposit. The landlords stated that they tenants have already paid the liquidated damages by surrendering their security deposit due to the tenants breaching the fixed term tenancy agreement by vacating within two months of the start of the fixed term tenancy that was not scheduled to revert to a month to month tenancy until after July 31, 2013.

The parties agreed that due to the tenants vacating the rental unit early, the landlords entered into two subsequent tenancy agreements for the purposes of minimizing their loss in accordance with the *Act*. The first tenancy agreement after the tenants vacated the rental unit was with new tenants EC and MC, and was effective between August 25, 2012, and March 31, 2013. Monthly rent for the EC and MC tenancy was \$3,895.00 per month which is \$45.00 per month more than the original fixed term tenancy agreement.

The second tenancy agreement after the tenants vacated the rental unit was with new tenants KP and VP, and was effective between April 6, 2013 and June 30, 2013. The final month of the fixed term tenancy, a tenant could not be found for the rental unit. Monthly rent for the KP and VP tenancy agreement was at a reduced amount of \$3,100.00 per month.

The landlord indicated that he calculated the loss of rent between April 1, 2013 and June 30, 2013 in the amount of \$2,870.10 as follows:

April 6, 2013 to April 30, 2013 – 24 days at \$103.33 per day	\$2,479.90
May 2013	\$3,100.00
June 2013	\$3,100.00
<b>Subtotal</b>	<b>\$8,679.90</b>
Amount owed by tenants as per original tenancy agreement for the months of April 2013 to June 2013 at \$3,850.00 per month	\$11,550.00
<i>Less amount collected from tenants from subtotal above</i>	<i>-( \$8,679.90)</i>
<b>Total amount outstanding for April 2013 to June 2013</b>	<b>\$2,870.10</b>

The landlords are also claiming \$768.60 for a “tenant placement fee” and referred to an invoice in their evidence on page F1 that reads in part, “Invoice 146... Tenant Placement Services (2 Months + 25 days)” and is in the amount of \$768.60. The date on the invoice is April 12, 2013. In addition, the landlords are claiming for loss of July 2013 rent in the amount of \$3,850.00 plus \$54.58 for “advertising”, as the landlords stated that a tenant could not be found for the last remaining month of the fixed term tenancy. The landlords referred to pages B5 and B6 in their evidence package, which was comprised of a payment receipt for a local newspaper advertisement related to the rental unit in the amount of \$54.58.

The tenants are claiming \$8,675.00 comprised of the return of their \$1,925.00 security deposit, and the return of June 2012 rent in the amount of \$2,900.00 and the return of July 2012 rent in the amount of \$3,850.00. The tenants admitted during the hearing that

they regret not being truthful when giving notice to the landlords that they would be vacating due to their son's schooling, and stated that the real reason why they wanted to vacate the rental unit was due to "excessive personal items" left in the rental unit by the landlords. There was no dispute between the parties that the rental unit was to be fully furnished as part of the tenancy agreement.

The tenants confirmed during the hearing that they did not write to the landlords at any time to advise that the rental unit had "excessive personal items", and that they wanted to vacate the rental unit early for that reason. The tenants stated that they had verbal discussions with the landlords only. The landlords stated that on June 17, 2012, they removed some children's toys, books, and decorative pieces including some plates and a vase at the request of the tenants. The tenants stated that the home contained much more than what the "Inventory List" accounted for, which was part of the tenancy agreement. The landlords referred to e-mails submitted on pages A6, A7 and A8 in evidence. The tenants stated that the e-mail on pages A6 in the landlord's evidence is between the landlords and the landlords' agent, and as a result was not an e-mail that was sent to or from the tenants.

The e-mail on page A8 submitted in evidence is from tenant SG dated May 17, 2012, and is addressed to landlord RM. The May 17, 2012, e-mail reads in part:

"....Thanks for making us feel so welcome ☺...

(Name of son) will be 5 in July, really into Star Wars, Spiderman, Dinosaurs, Pirates, all typical boy stuff. Enjoys soccer, basketball, pretty much all ball games. (Name of daughter) will be 2 in July and loves dolls, strollers, puzzles, etc.

Feel free to leave any toys you don't plan to take as I am sure we will make use of them...

I told (first name of tenant LG) about the cook books and she got very excited so please feel free to leave them if you want..."

[reproduced as written]

The tenants were asked to provide specific examples of the "excessive personal items" that were in allegedly in the rental unit and that were not listed on the "Inventory List" referred to in the tenancy agreement. The tenants referred to jams in the cupboards, food items in the refrigerator, pens in the drawers, and a "load of items". The landlords

disputed the testimony of the tenants by stating that dishes and cutlery were included in the “Inventory List” submitted in evidence. The tenants are seeking a refund of 100% of the rent they paid for June 2012 and July 2012 due to the landlords having “excessive personal items” in the rental unit, plus the return of their security deposit.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, 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.

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.

The landlords have claimed \$7,543.28 comprised of the following:

<b>Item Description</b>	<b>Amount Claimed</b>
1. Loss of rent between April 2013 and June 2013	\$2,870.10
2. Loss of rent for July 2013	\$3,850.00
3. Tenant placement fee	\$768.60
4. Advertising costs	\$54.58
<b>TOTAL</b>	<b>\$7,543.28</b>

The tenants have claimed \$8,675.00 comprised of the following:

Item Description	Amount Claimed
1. Return of security deposit	\$1,925.00
2. Return of June 2012 rent	\$2,900.00
3. Return of July 2012 rent	\$3,850.00
<b>TOTAL</b>	<b>\$8,675.00</b>

Based on documentary evidence, and testimony provided, I find the tenants breached a fixed term tenancy by vacating the rental unit just over two months into a one year fixed term tenancy. At no time did the tenants write to the landlords to advise them that the rental unit had “excessive personal items” from the landlords which prompted the tenants to want to end the tenancy. In fact, tenant SG wrote in an e-mail to the landlords dated May 17, 2012, confirming that tenant SG approved of toys being left in the rental unit and that they would make use of them, and that tenant SG was aware of the landlords’ cook books and that tenant SG’s spouse was excited when she heard about the cook books. Furthermore, the tenants’ credibility was negatively impacted when they admitted during the hearing that they were not truthful when they issued the notice to the landlords due to their son’s school as the reason why they had to vacate the rental unit.

Section 45 of the *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, that rent is payable under the tenancy agreement.

**(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.**

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

[emphasis added]

Based on the above, I find the tenants violated section 45 of the *Act*, as they are not permitted to give notice earlier than the date specified in the tenancy agreement as the end of the tenancy, which in the matter before me was July 31, 2013. In addition, I do not accept that “excessive personal items” constitutes a breach of a material term of the tenancy that would justify the tenants vacating the rental unit before the end of their fixed term tenancy. Furthermore, section 45(3) of the *Act* requires that the tenants give written notice of the failure which the tenants failed to do. The tenants confirmed through their testimony that they did not write to the landlords at any time regarding “excessive personal items” in the rental unit, nor did the tenants provide proof that the landlords did not correct the situation within a reasonable period after giving written notice as required by section 45(3) of the *Act*. Therefore, I dismiss the tenants’ claim for the return of June 2012 and July 2012 rent without leave to reapply, due to insufficient evidence.

The tenants have also claimed for the return of their security deposit of \$1,925.00. I find that the tenants have already surrendered their security deposit of \$1,900.00 towards the liquidated damages amount of \$1,900.00 in accordance with term #5 of the tenancy agreement and that they tenants are not entitled to claim towards their security deposit as a result, as they had already agreed to surrender the security deposit towards the liquidated damages. I find that the tenants overpaid the liquidated damages of \$1,900.00 by **\$25.00** as the security deposit was \$1,925.00 and had accrued \$0.00 in interest. Based on the above, I find that the tenants are entitled to a \$25.00 credit comprised of their security deposit balance owing, which I will address later in this Decision.

As a majority of the tenants’ application did not have merit, I do not grant the tenants the recovery of their filing fee as a result.

The landlords’ have claimed \$768.60 for a “tenant placement fee” and \$54.58 for “advertising costs”. I dismiss both of these portions of the landlords’ claim in their entirety as the landlords have already been reimbursed by the tenants in the amount of \$1,900.00 for liquidated damages. Liquidated damages are an agreed upon pre-estimate of the landlord’s costs of re-renting the rental unit and as a result, have already been accounted for in the \$1,900.00 payment made by the tenants when they vacated the rental unit early having breached the fixed term tenancy.



I find the landlords did not provide an accounting for the rent they received that was greater than the amount of rent agreed to by the tenants. As a result, I have incorporated the greater amount of rent in the form of a credit for the tenants in this Decision. The tenancy agreement between the landlords and tenants EC and MC was effective between August 25, 2012 and March 31, 2013, and was for \$3,895.00 per month which is \$45.00 per month more than what the tenants were paying, which was \$3,850.00 per month. In the interests of fairness, I find that for the seven months from September 2012 to March 2013 inclusive, that the landlords accrued \$315.00 more in rent from tenants EC and MC, than they would have if tenants SG and LG remained in the rental unit. As a result, in addition to the **\$25.00** security deposit credit for the tenants, I find the tenants are also entitled to a credit of **\$315.00** as the landlords received more rent for seven months with tenants EC and MC than they would have if tenants SG and LG, the original tenants, had remained in the rental unit.

There is no dispute that between April 6, 2013 and June 30, 2013, the landlords suffered a loss of rent as they accepted a lower amount of rent to minimize their loss, versus leaving the rental unit empty. The tenants acknowledged during the hearing that they would rather have other tenants renting the rental unit at a lower amount of rent for the remainder of their fixed term tenancy than having the rental unit remain vacant. Section 7 of the *Act* states:

**Liability for not complying with this Act or a tenancy agreement**

**7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

**(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.**

[emphasis added]

Based on the above, I find the landlords complied with section 7 by minimizing their loss, even if it meant renting at a lower amount of rent for a portion of the remainder of the fixed term tenancy and claiming for the difference. In the matter before me, I accept the landlords' testimony and documentary evidence that the landlords suffered a loss of \$2,870.10 between April 1, 2013 and June 30, 2013, as the monthly rent was reduced to \$3,100.00 per month, and the tenants KP and VP did not occupy the rental unit for the first five days of April 2013. I find the landlords have met the burden of proof and are

entitled to **\$2,870.10** for reduced rent and loss of rent between April 1, 2013 and June 30, 2013.

There is no dispute that for the month of July 2013, the rental unit was vacant. Based on the testimony of the landlords and the receipts for advertising for the rental unit, I find the landlords did what was reasonable to attempt to rent the rental unit for July 2013, however, were unable to re-rent the rental unit for the month of July 2013. Therefore, I find that the landlords suffered a loss of \$3,850.00 for loss of July 2013 rent, and that they have met the burden of proof and are entitled to **\$3,850.00** in compensation as a result.

As the majority of the landlords' claim had merit, **I grant** the landlords the recovery of their filing fee in the amount of **\$100.00**.

**I find** that the landlords have established a total monetary claim as follows:

Item Description	Amount Claimed
1. Loss of rent between April 2013 and June 2013	\$2,870.10
2. Loss of rent for July 2013	\$3,850.00
3. Filing fee	\$100.00
<b>Subtotal</b>	<b>\$6,820.10</b>
<i>Less tenants' credit of \$25.00 for overpayment of liquidated damages when security deposit of \$1,925.00 was surrendered by tenants</i>	-( \$25.00)
<i>Less tenants' credit of \$315.00 for greater rent received by the landlords between September 2012 and March 2013.</i>	-( \$315.00)
<b>TOTAL</b>	<b>\$6,480.10</b>

Based on the above, **I grant** the landlords a monetary order pursuant to section 67 of the *Act*, in the amount of **\$6,480.10**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

### Conclusion

I dismiss the majority of the tenants' claim in full, with the exception of a \$25.00 and a \$315.00 credit as described in the table above, which has been offset from the monetary claim of the landlord.

I grant the landlords a monetary order pursuant to section 67 of the *Act*, in the amount of \$6,480.10. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: September 13, 2013

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Residential Tenancy Branch

