



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR FF

### Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) by the landlords for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee.

The landlords and tenant, DK, (the “tenant”) who was representing both tenants, attended the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

The tenant confirmed receiving the documentary evidence of the landlords and that the evidence was reviewed prior to the hearing. The tenant stated that he faxed in evidence; however, the tenants’ evidence was excluded from the hearing, as it was not received by the time of the hearing and was therefore not submitted in accordance with the Rules of Procedure. As a result, only the landlords’ documentary evidence has been considered. I find the tenants were served with the landlords’ evidence in accordance with the *Act* and Rules of Procedure.

### Issue to be Decided

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

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy agreement began on February 1, 2013 and was to revert to a month to month tenancy after July 31, 2013. Monthly rent in the amount of \$750.00 was due on the first day of

each month. A security deposit of \$375.00 was paid by the tenants at the start of the tenancy which the parties confirmed was surrendered in full to the landlords at the end of the tenancy by way of a mutual agreement. The tenant's position was that the agreement regarding the security deposit meant that the landlords could not apply for further compensation for loss of rent. The landlords' position was that the security deposit agreement was related to a reduced amount of \$300.00 for liquidated damages, which was originally listed as \$500.00 in the tenancy agreement under term #23, plus other costs such as carpet cleaning.

The tenant stated that he served a notice to end the tenancy on the landlords on April 23, 2013 by e-mail, which was supported by an e-mail from the tenant dated April 23, 2013 submitted in evidence by the landlords. The tenant confirmed that rent for June 2013 was not paid to the landlords. The landlords are seeking \$750.00 for loss of June 2013 rent. The landlords stated that they are not seeking loss of rent for July 2013, as they had new tenants for the month of July 2013.

The tenant stated that his position was that the landlords' agent, AP, did not respond quickly enough and failed to do their "due diligence" to get the potential new renters into the rental unit for June 1, 2013, as the tenant provided the names of the potential new renters to the landlords. The potential new renters were ultimately approved and moved into the rental unit for the month of July 2013. The landlords disputed the tenant's testimony and stated that the potential new renters did not fill out the required paperwork in time to be approved for the month of June 2013.

The parties agreed that the tenants returned the rental unit keys and did a walkthrough of the rental unit on June 1, 2013. Both parties agreed that there was no agreement in writing between the tenant and the landlord to end the tenancy early. The landlords submitted a copy of the tenancy agreement, condition inspection report, the written notice to end tenancy from the tenants, proof of service documents and correspondence in evidence.

### Analysis

Based on the documentary evidence and the testimony of the parties 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.

**Claim for unpaid rent** – There is no dispute that June 2013 rent was not paid by the tenants. The tenant stated that he felt that the landlords' agent did not act quickly enough and failed to do their "due diligence" when the tenant provided the names of potential new renters and that the potential new renters should have been able to move into the rental unit as of June 1, 2013. The landlords disputed the tenant's testimony by stating that the potential new renters, who ultimately did move into the rental unit for the month of July 2013, did not fill out the required paperwork in time to move in for the month of June 2013.

Section 45(2) 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]**

The parties confirmed that there was no agreement in writing to end the fixed term tenancy. Given the above, **I find** the tenants were unable to end a fixed term tenancy by providing notice on April 23, 2013 as the end of tenancy date could not be before July 31, 2013, unless by a mutual agreement in writing, which the tenant confirmed was not provided.

Section 7 of the *Act*, requires that the landlords do whatever is reasonable to minimize their damage or loss, and **I find** that the landlords minimized their loss by securing new renters for the month of July 2013. I find the tenant provided insufficient evidence to support his testimony that potential new renters were available for June 2013, and that the landlords' agent did not act quickly enough to arrange for the potential new renters to move into the rental unit for the month of June 2013. Based on the above, **I find** the tenants were not authorized under the *Act* to end their fixed term tenancy early and that the landlords have met the burden of proof to prove that the tenants owe the landlords for the loss of June 2013 rent in the amount of **\$750.00**.

As the landlords have succeeded with their application, **I grant** the landlords the recovery of the **\$50.00** filing fee.

As the tenants' full security deposit has already been surrendered by the tenants to the landlord towards \$300.00 in liquidated damages, reduced from the originally indicated \$500.00 amount listed in term #23 of the tenancy agreement, plus other costs for a total of \$375.00, **I find** there is no security deposit remaining to offset against the landlords' monetary claim.

**Monetary Order** – **I find** that the landlords have established a total monetary claim of **\$800.00** comprised of loss of June 2013 rent in the amount of \$750.00, plus the filing fee of \$50.00. **I grant** the landlords a monetary order pursuant to section 67 of the *Act*, in the amount of **\$800.00**. 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

The landlords have been granted a monetary order pursuant to section 67 of the *Act*, in the amount of **\$800.00**. The monetary 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.

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: November 12, 2013

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Residential Tenancy Branch

