



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing was reconvened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions under oath.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The tenancy started November 15, 2012 on a fixed term to November 14, 2013. On July 23, 2014 the Tenant gave notice to end the tenancy for July 31, 2013 and moved out of the unit on that date. Rent of \$2,400.00 was payable monthly and at the outset of the tenancy the Landlord collected \$1,200.00 as a security deposit. No move-in or move-out inspection was offered or completed by the Landlord.

The Landlord states that the unit was listed for sale prior to the Tenant's giving their notice and is still listed for sale. The Landlord states that the unit was advertised for

rent and while the Landlord does not recall the date the advertisement was placed online, their first inquiry on the unit was made August 9, 2013. The Landlord states that the unit was initially advertised at the same rental rate and then reduced each month thereafter with the last rental ad setting the rent at \$2,000.00. The Landlord states that they informed prospective tenants of the unit being on sale when interest was shown for the rental. The Landlord states that the unit has not been either rented or sold. The Landlord claims lost rental income for August, September, October and ½ of November 2013.

The Tenant states that they had no choice to move out as they lost a roommate and were not able to afford the rent. The Tenant states that they advertised the unit for subleasing and had a potential tenant however the Landlord also had an interested buyer at the time and the Landlord told them to hold off with the interested tenant due to the interested buyer. The Tenant states that when the buyer fell through the potential tenants had found another rental unit. The Tenant states that they continued to forward interested tenants to the Landlord in August 2013. The Landlord states that the Tenants were given a choice about whether to proceed with the sublease or to wait for a buyer.

The Landlord states that the Tenants caused the walls and ceiling to crack. The Landlord states that the damage was not there at the onset of the tenancy and thinks that the Tenants caused the damage by slamming a door against the wall. The Landlord provided a quote of \$300.00 for repairs and provided photos. The repairs have not been completed. The Tenant states that they do not know how the walls cracked but that maintenance people informed the Tenant that the drywall and paint cracked due to the concrete walls.

The Landlord claims \$220.00 for strata fines and the Tenant does not dispute this claim.

### Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Given that the Tenants did not provide a month's notice, I find that the Landlord is reasonably entitled to rent for August 2013 in the amount of **\$2,400.00**. However, given the Landlord's evidence that the unit was up for sale at the time of attempting to rent the unit, I find it more likely than not that the unit was not rented due to the unit being listed for sale and therefore I find that the Landlord has failed to establish that the Tenant caused the loss claimed to the end of the fixed term. I therefore dismiss the remaining claim for lost rental income.

Although the Landlord thinks that the Tenants caused the damage to the walls, given the photos appearance and considering the Tenant's evidence of structural problems with the concrete walls, I find on a balance of probabilities that the Landlord has failed to substantiate that any actions of the Tenants caused this damage and I dismiss the claim.

Based on undisputed evidence I find that the landlord has substantiated its claims for **\$220.00** for strata fines. As the Landlord has been partially successful with its application, I find that the Landlord is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$2,670.00**. Deducting the security deposit of **\$1,200.00** plus zero interest from this amount leaves **\$1,470.00** owed by the Tenant to the Landlord.

### Conclusion

**I order** that the Landlord retain the **deposit** and interest of \$1,200.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act

for the balance due of **\$1,470.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: January 20, 2013

---

Residential Tenancy Branch

