



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNR, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords for a monetary order for unpaid rent, for damages to the unit and to recover the cost of the filing fee from the tenants.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Preliminary Matter

At the outset of the hearing, the parties agreed that the tenant (MC) should be added as a tenant in the style of cause. As, (MC) was a tenant under the terms of the tenancy agreement, I find it appropriate to amend the style of cause to included (MC) as a respondent.

### Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent?  
Are the landlords entitled to monetary compensation for damages?

### Background and Evidence

The parties agreed they entered into a fixed term tenancy which began on October 10, 2013 and was to expire on April 13, 2014. Rent in the amount of \$1,200.00 was payable on the first of each month. The tenants were required to pay a security deposit and pet damage deposit, however, those deposit were not paid by the tenants.

The landlords claim as follows:

a.	Unpaid rent October 2013	\$ 125.00
b.	Loss of rent for November and December 2013	\$ 2,400.00
c.	Cleaning	\$ 80.00
d.	Changing locks	\$ 95.00
e.	Cost of re-renting	\$ 150.00
f.	Filing fee	\$ 50.00
	<b>Total claimed</b>	<b>\$ 2,900.00</b>

#### Unpaid rent for October 2013

At the outset of the hearing the tenants agreed that they owed rent for October 2013, in the amount of \$125.00.

#### Loss of rent for November and December 2013

The landlord testified that on October 31, 2013, the tenants were moving items out of the rental unit and she went to investigate. The landlord stated that she asked the tenants if they were moving out and they told her they were not. The landlord stated that she asked the tenants several different times and they continued to deny that they were moving and they refused to provide any further information.

The landlord testified that on November 17<sup>th</sup> and 18<sup>th</sup> she sent text messages to the tenant, however there was no responses. The landlord stated the tenants had lied to her as they had move-out of the rental unit without any notice, even after they denied they were moving on October 31, 2013.

The landlord testified that she immediately advertised the rental unit for rent and was not able to find a new tenant until January 1, 2014. The landlord stated December 2013, is always difficult month to find new renters due to the holidays.

The tenants testified that they entered into the rental agreement, knowing that the rent would be difficult to pay and they were under duress.

The tenants testified that they verbally gave notice on October 26, 2013, as they told the landlord it was not working out. The tenants stated that they provided written notice on October 31, 2013, and sent that letter by regular mail.

The landlord responded that there was never any notice give by the tenants either verbally or by writing as she never received any letter by mail.

### Cleaning

The landlord testified that the tenants did not clean the rental unit at the end of the tenancy and that she seeks to recover the \$80.00 she paid for cleaning. Filed in evidence is a receipt for cleaning. The landlord confirmed not photographs were submitted to support her position.

The tenants testified that they disagree that they left the rental unit un-cleaned.

### Changing locks

The landlord testified that the tenants did not return the keys at the end of the tenancy and she was required to have the locks changed and new keys cut. The landlord stated she seeks to recover the cost of \$95.00. Filed in evidence is a receipt for locks.

The tenants testified that the keys were returned to the landlord by regular mail which was sent on October 31, 2013.

The landlord denied receiving any keys by mail from the tenants.

### Cost of re-renting

The landlord testified that she seeks to recover the cost of advertising as these were cost that she would not have incurred if the tenants did not breach the fixed term tenancy agreement and the administrative cost of having to show the unit. Filed in evidence are receipts for advisements.

The tenants testified that they do not dispute the cost of the advertisements as they are supported by receipts.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;

- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlords have the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

#### Unpaid rent for October 2013

The tenants agreed that all rent was not paid for October 2013. I find the tenants breached the Act, when they failed to pay rent due under the terms of the tenancy agreement and as result the landlord suffered losses. Therefore, I find the landlords are entitled to recover unpaid rent in the amount of **\$125.00**.

#### Loss of rent for November and December 2013

*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,*

In this case, even If I accept the tenants evidence, that on October 31, 2013, they sent the landlords written notice to end the tenancy, that notice would been deemed received on November 5, 2013. However, under the Act the tenants were not entitled to give notice to end the tenancy prior to the date specified in the tenancy agreement. I find the tenants have breached section 45(2) of the Act as the earliest date they could have legally ended the tenancy was April 30, 2014, as stated in the tenancy agreement.

As a result of the tenants not complying with the terms of the tenancy agreement or the Act the landlords suffered a loss of rent for November and December 2013, the landlords are entitled to an amount sufficient to put the landlords in the same position as if the tenants had not breached the tenancy agreement or Act. This includes

compensating the landlords for any loss of rent up to the earliest time that the tenants could have legally ended the tenancy.

However, under section 7 of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss.

The duty to minimize the loss begins when the party entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will have an effect on a monetary claim, where the party who claims compensation can substantiate such a claim.

In this case, the evidence of the landlord was that they immediately advertised the rental unit for rent and was able to find a new renter commencing January 1, 2014. As a result, I find the landlords made reasonable efforts to minimize the loss. Therefore, I find the landlords are entitled to recover loss of rent for November and December 2013, in the amount of **\$2,400.00**.

#### Cleaning

Under section 37 of the Act, the tenants are required to return the rental unit to the landlords reasonably clean and undamaged, except for reasonable wear and tear. Normal wear and tear does not constitute damage.

In this case, each party have provided a different version as to the cleanliness of the rental unit at the end of the tenancy. As the onus is on the landlord to prove their claim, I find without further evidence such a photographs, the landlord has failed to provide sufficient evidence to support this portion of their claim. Therefore, I dismiss the landlords claim for cleaning costs.

#### Changing locks

Under the Residential Tenancy Regulation, the tenants must return the keys to the landlords.

In this case, the evidence of the tenants was that they returned the keys to the landlord, by regular mail, which the landlord denied receiving. As the onus is on the tenant to return the keys to the landlord, I find without further evidence, such a Canada post tracking number that the tenants have failed to prove that those keys were received by the landlords. Therefore, I find the tenants breached the Act, when they failed to ensure that the keys were returned to the landlord when they vacated the rental premises. Therefore, I find the landlords are entitled to recover the cost of having the locks changes in the amount of **\$95.00**.

Cost of re-renting

In this case, I have found the tenants breached the Act, and the tenancy agreement, when they vacated the rental unit prior to the fixed term agreement and the landlords incurred the cost of having to advertise the rental unit. These cost are supported by receipts. Further, the landlord has claimed an amount of \$75.00 for their administrative cost, which I find is reasonable. I find the landlords suffered a loss due to the actions of the tenants. Therefore, I find the landlords are entitled to recover the cost of re-renting the rental premises in the amount of **\$150.00**.

I find that the landlords have established a total monetary claim of **\$2,820.00** comprised of the above described amounts and the \$50.00 fee paid for this application.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlords are granted a monetary order in the above amounts.

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: March 28, 2014

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Residential Tenancy Branch

