



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Code MNR, MNDC, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent and an order to retain the security deposit in partial satisfaction of the claim.

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.

### Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The parties entered into a fixed term tenancy which began on May 1, 2013 and was to expire on May 1, 2014. Rent in the amount of \$1,400.00 was payable on the first of each month. A security deposit of \$700.00 was paid by the tenants.

The landlord claims as follows:

|    |                           |                   |
|----|---------------------------|-------------------|
| a. | Unpaid utilities          | \$ 111.33         |
| b. | Loss of rent for December | \$1,400.00        |
| c. | Filing fee                | \$ 50.00          |
|    | <b>Total claimed</b>      | <b>\$1,561.33</b> |

Unpaid utilities

At the outset of the hearing the landlord stated one of the tenants paid \$83.54 toward the outstanding utilities and the balance owed is \$83.54.

The tenants agreed the balance owed for utilities is \$83.54.

Loss of rent for December

The landlord testified the tenants breached the fixed term agreement by giving notice on to end the tenancy at the beginning of November to end the tenancy November 30, 2013. The landlord stated the tenants were informed that they would be held responsible for any loss of rent. The landlord stated he immediately advertised the rental unit, but was unable to find a new rent for the month of December 2013. The landlord stated they were able to find a new renter for January 2014.

The tenants testified that they gave verbal notice in October 2013, and then written notice to end the tenancy at the beginning of November 2013, with an effective vacancy date of November 30, 2013. The tenants stated the landlord did not tell them they would be held responsible for any loss of rent as they would have stayed until a new renter was found.

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 landlord has 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 utilities

At the outset of the hearing, the tenants did not dispute that the landlord is owed the amount of \$83.54 for unpaid utilities. Therefore, I find the landlord is entitled to recover unpaid utilities in the amount of **\$83.54**.

Loss of rent for December

Section 45 of the Residential Tenancy 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,*

In this case, the parties entered into a fixed term tenancy which was to expire on May 1, 2014. The both parties agreed that the tenants provided written notice to end the tenancy effective November 30, 2013. However, under the Act the tenant was not entitled to give notice to end the tenancy prior to the date specified in the tenancy agreement. I find the tenants have breach section 45(2) of the Act as the earliest date they could have legally ended the tenancy was May 1, 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 landlord suffered a loss of rent for December 2013. The landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenants had not breached the tenancy agreement or Act. This includes compensating the landlord 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.

In this case, the evidence of the landlord was that they immediately advertised the rental unit when they received written notice to end the tenancy, however, were unable to find a new rent for December 2013. New renters were found for January 2014.

As a result, I find the landlord made reasonable efforts to minimize the loss. Therefore, I find the landlord is entitled to recover loss of rent in the amount of **\$1,400.00**.

I find that the landlord has established a total monetary claim of **\$1,533.54** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit and interest of **\$700.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$833.54**.

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

#### Conclusion

The landlord is granted a monetary and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: April 07, 2014

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Residential Tenancy Branch

