



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MNDC, MNR, MNSD

### Introduction

This is an application for a Monetary Order for \$987.50.

Some documentary evidence and written arguments have been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

Has the applicant established a monetary claim against the respondents in the amount of \$987.50?

### Background and Evidence

The applicant testified that:

- On April 30, 2013 the tenants signed a one-year fixed term tenancy agreement that began on May 1, 2013, with an expiry date April 30, 2014.
- The tenants also paid a security deposit of \$847.50 prior to the beginning of the tenancy.
- The tenants also agreed to pay 50% of electrical utility.
- In the tenancy agreement the tenants also agreed to pay a penalty of \$847.50 for early termination of the fixed term.

- On December 12, 2013 the tenants gave her written notice that they would be vacating the rental unit at the end of January 2014, three months prior to the expiry date of the lease.
- The tenant subsequently vacated on January 31, 2014 and she therefore believes that they must pay the penalty for vacating prior to the end of the lease.
- At the end of the tenancy the tenants also agreed to pay \$90.00 for outstanding electrical utilities.

She is therefore requesting a Monetary Order as follows:

Penalty for breaking lease	\$847.50
Electrical utilities	\$90.00
Filing fee	\$50.00
Total	\$987.50

The respondents testified that:

- They did end the tenancy prior to the end of the fixed term, however they gave the landlord more than one-month Notice to End Tenancy and as a result the landlord was able to re-rent the unit and lost no rent whatsoever.
- When they initialed the penalty clause on the tenancy agreement they assumed it would only take effect if they gave insufficient notice and the landlord was unable to re-rent the unit.
- They therefore believe that they should not have to pay the penalty.
- They do not dispute the electrical utilities charge of \$90.00, and in fact they had already given the landlord written permission to keep \$90.00 of the security deposit towards the electrical utilities.

### Analysis

The tenants do not dispute the \$90.00 electrical utilities charge and therefore I allow that portion of the claim.

I will not however allow the landlords claim for a penalty charge of \$847.50, as there is nothing in the Residential Tenancy Act that allows landlord to charge a penalty, and in fact, Residential Tenancy Policy Guideline #4 specifically states that penalties are unenforceable.

I also deny the request for recovery of the \$50.00 filing fee, because the only portion of this claim that I have allowed is the \$90.00 electrical utilities charge which the tenants had already given the landlord written permission to withhold from the security deposit.

Conclusion

I have allowed \$90.00 of the landlords claim and I therefore order that the landlord may retain \$90.00 of the security deposit and I've issued an order for the landlord to return the remaining \$757.50 to the tenants.

The remainder of the landlords claim is dismissed without leave to reapply.

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: May 20, 2014

---

Residential Tenancy Branch

