



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement, to retain all or part of the security deposit, and to recover the RTB filing fee.

Both the landlords and one of the tenants attended the teleconference hearing and gave affirmed evidence.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

### Background and Evidence

The landlord gave evidence that the tenants viewed the rental property on about February 12, 2014 then returned on February 14, 2014, completed a rental application, and paid an \$800.00 security deposit. It is the landlord's position that the tenants entered into a verbal tenancy agreement on February 14, 2014 to rent the rental property starting on March 15, 2014. At that time, the tenants told him they wanted a one-year lease but the landlord did not agree.

The landlord provided copies of a Rental Application signed by the male tenant and dated February 13, 2014 and a Deposit Receipt dated February 14, 2014 which indicates the landlord received \$800.00 and the first month's rent was \$1,550.00.

The landlord gave evidence that the male tenant came to the property on March 1<sup>st</sup>. At that time, a branch had fallen from a tree in the yard due to snow. The parties spoke on

the phone later that day. The following day, March 2, 2014, the tenants called and told the landlords they did not want to rent the rental property.

On March 2, 2014, the same day the tenants told him they did not want the house, the landlord posted the property on Craigslist to find new tenants. They found new tenants for April 1, 2014 paying rent of \$1,550.00. The landlord claims a loss of rental income for the period March 15 to April 1, 2014 of \$775.00 and their RTB filing fee of \$50.00 for a total claim of \$825.00.

The tenant gave evidence that a security deposit of \$800.00 is not permitted when the rent is lower than \$1,600.00. He said it was “nebulous” whether the agreed rent was \$1,500.00 or \$1,550.00.

The tenant gave evidence that the property was occupied when they viewed it on February 14, 2014, and they could not tell how dirty it was. They viewed the house again on March 2, 2014 and the kitchen was filthy. Also, the willow tree in the backyard had been destroyed by snow and there was therefore less privacy.

The tenant also gave evidence that the neighbours were confrontational with him when he visited the property on March 1<sup>st</sup>, and told him “you better cut those trees down”. The landlord disagrees that the neighbours would have said anything like that to the tenant, especially since they would not have known who he was when they saw him on the property.

The tenant provided a copy of a letter they gave to the landlord dated March 7, 2014. The letter states that a March 2, 2014 inspection of the property revealed its condition to be unacceptable and demands the return of the security deposit.

The landlord says that the willow tree is still in the backyard, however it now has one branch missing. The landlord notes that the house was not yet ready for the March 15, 2014 tenancy when the tenants viewed it on March 2, 2014.

The landlord agrees that the correct amount of the security deposit was \$775.00, but says the tenant only had \$800.00 with him when he paid it. The landlord says he told the tenant he could take the extra \$25.00 off the first month’s rent.

### Analysis

I find the parties entered into a verbal tenancy agreement on about February 14, 2014 whereby the tenancy would start March 15, 2014 and the tenants would pay \$1,550.00

monthly rent. The parties were largely in agreement about their initial arrangement, and I note that a tenancy agreement can still be binding even if it is not in writing.

I accept the evidence of the parties that the tenants paid a security deposit of \$800.00. I agree with the tenant that an \$800.00 security deposit is greater than one half month's rent and that is disallowed by Section 19. However, this does not nullify the tenancy agreement or impact the landlord's ability to make a claim for lost rental income.

I find the tenants breached the tenancy agreement when they did not pay rent for the rental period commencing March 15, 2014. The tenants had an opportunity to view the rental property prior to entering into the tenancy agreement, and the landlords had until March 15, 2014 to make the rental unit ready for their tenancy. The only change between the tenants' first viewing of the property and the March 2<sup>nd</sup> viewing was the loss of a tree branch. I find that change was not significant enough to frustrate the tenancy agreement.

The landlords incurred a loss of \$775.00 rental income as a result of the tenants' breach. The landlords are entitled to compensation of that amount and to recover their RTB filing fee of \$50.00. The total amount due the landlords is \$825.00. I order that the landlord retain the security deposit of \$800.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$25.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### Conclusion

I grant the landlord a monetary order for \$25.00. The landlord may also retain the security deposit.

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: July 17, 2014

---

Residential Tenancy Branch

