



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Capreit  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

MNR, MNDC, MNSD, FF

### Introduction

This hearing was convened 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 unpaid rent - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord obtained the Tenant's forwarding residential address from the Tenant's daughter when the keys to the unit were returned. I accept the Landlord's evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenant did not participate in the hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The tenancy started on July 1, 2013 on a fixed term to June 30, 2014. No notice to end the tenancy was provided to the Landlord and the keys to the unit were returned on December 31, 2014. Rent of \$1,180.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$590.00 as a security deposit. No rent was paid for December 2014. The Landlord claims unpaid rent of \$1,180.00.

The tenancy agreement provides for liquidated damages of \$350.00 and the Landlord claims this amount.

The unit was advertised on January 1, 2014 and a new tenant was obtained for January 15, 2014. The Landlord claims \$105.00 for lost rental income, the amount being confirmed orally at the hearing.

The unit was clean except for the counter tops and the presence of some utensils. The Landlord claims \$90.00 as the standard amount paid to a 3<sup>rd</sup> party regardless of the amount of time spent for cleaning the unit. No invoice was provided.

The Tenant did not clean the carpets and the Landlord claims \$125.00. An invoice was provided.

#### Analysis

Section 26 of the Act provides that rent is payable as provided under the tenancy agreement. Once a tenant moves out of the unit and therefore ends the tenancy, rent is no longer payable however a landlord may claim damages for any lost rental income past the tenancy end date if caused by the tenant's actions or negligence. Given the Landlord's evidence that the keys were returned on December 31, 2014 and that no rent was paid for December 2013, I find that the Landlord is entitled to **\$1,180.00**.

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. Where a tenant breaches a tenancy agreement by ending a fixed term early, the tenant is liable for rent after the end of the tenancy to the end of the fixed term however a landlord must take reasonable steps to mitigate the lost rental income claimed. Where liquidated damages are provided for under the tenancy agreement, the landlord has a choice to accept liquidated damages amount or to pursue the lost rental income as the damages flow from the same breach: ending the fixed term tenancy early. Where the landlord claims both the conflict must be resolved in favour of the tenant. As the Landlord has claimed both liquidated damages and lost rental income for the same breach, I find that the Landlord is only entitled to the amount claimed for lost rental income in the amount of **\$105.00**. In making this determination, I find that

the Landlord took reasonable steps to mitigate its losses as a result of the Tenant's breach of the fixed term.

Given that the lack of an invoice and considering that a tenant is only responsible for cost of cleaning to the extent the unit was left unclean, I dismiss the Landlord's claim for cleaning the unit.

Given the invoice and considering that the tenancy lasted for six months and was not left cleaned by the Tenant, I find that the Landlord is entitled to the costs claimed of **\$125.00**.

As the Landlord's application has been primarily successful I find that the Landlord is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$1,460.00**. Deducting the security deposit of **\$590.00** plus zero interest leaves **\$870.00** owed by the Tenant to the Landlord.

#### Conclusion

I Order the Landlord to retain security deposit plus interest of \$590.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$870.00**. 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: August 25, 2014

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Residential Tenancy Branch

