



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Mainstreet Equity Corp.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for a monetary order for money owed or compensation for damage or loss and alleged damage to the rental unit, for authority to retain the tenants' security deposit, and for recovery of the filing fee paid for this application.

The landlord' agent (hereafter "landlord") attended the telephone conference call hearing; the tenants did not attend.

The landlord stated that they served each tenant with the landlord's Application for Dispute Resolution and Notice of Hearing by registered mail on May 14, 2014. The landlord provided the tracking numbers for the registered mail at the hearing.

Based upon the submissions of the landlord, I find the tenants were served notice of this hearing and the landlord's application in a manner complying with section 89(1) of the Residential Tenancy Act and the hearing proceeded in the tenants' absence.

The landlord was provided the opportunity to present her evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Is the landlord entitled to authority to retain the tenants' security deposit, further monetary compensation, and to recover the filing fee?

### Background and Evidence

The landlord submitted that this tenancy began on March 1, 2013, for a one year, fixed term ending, that the tenants renewed a fixed term tenancy of one year, and that the tenants vacated the rental unit on April 30, 2014. The monthly rent was \$1100.

The landlord submitted that the tenants paid a security deposit of \$550 and a pet damage deposit of \$200. The landlord stated that the pet damage deposit has been returned to the tenants.

The landlord's monetary claim is in the amount of \$1470, for loss of rent revenue for the month of May 2014, due to the tenants vacating the rental unit prior to the end of the fixed term and without providing sufficient notice, a lease break fee of \$350, and a maintenance fee of \$20.

The landlord submitted that the tenants left a note in the rental unit on April 30, 2014, informing the landlord that they had vacated the rental unit, without any prior notice. The landlord submitted that this insufficient notice caused a loss of rent revenue for May 2014, as there was no time to find new tenants.

Due to the tenants leaving the rental unit prior to the end of the fixed term and without sufficient notice, the landlord claims loss of rent revenue for May 2014, in the amount of \$1100.

As to the lease break fee, the landlord submitted that they were entitled to the amount of \$350, as stated in the written tenancy agreement, as the tenants broke the terms of the fixed term tenancy agreement by leaving prior to the end of the fixed term. The landlord explained that the tenants agreed to pay this amount, which was meant to cover costs of advertising and securing new tenants.

As to the maintenance fee, the landlord submitted that this claim was to cover the costs of missing light bulbs and cracked tiles.

The landlord's relevant documentary evidence included, but was not limited to, the written tenancy agreement, the notice from the tenants, dated April 30, 2014, that they were vacating the next day, which also provided a written forwarding address, a condition inspection report, a maintenance log showing charges in the amount of \$20, and registered mail receipts.

### Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that occurs as a result, so long as the applicant verifies the loss, as required under section 67. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss.

Under section 45(2) of the Act, a tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term. In this case, the written tenancy agreement shows the fixed term ending not less than 6 months following March 1, 2014.

In the case before me, I accept that the tenants provided insufficient notice that they were ending the fixed term tenancy agreement prior to the end of the fixed term and I find the tenants were responsible to pay monthly rent to the landlord until the end of the fixed term, subject to the landlord's requirement that they take reasonable measures to minimize their loss.

I find it reasonable that the landlord would be unable to find a new tenant for May, when the tenants notice to vacate was given on April 30, 2014. I therefore find the landlord submitted sufficient evidence to support their claim for loss of rent revenue for May 2014, and grant them a monetary award of \$1100.

As to the lease break fee, RTB Policy Guideline #4 (Liquidated Damages) states that in order to be enforceable, a liquidated damages clause in a tenancy agreement, in this case, the lease break fee, must be a genuine pre-estimate of loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. If the liquidated damage clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible. The landlord claims the liquidated damages were intended to compensate them for their time and expense in advertising the rental unit as a result of the early end to tenancy by the tenant.

In the case before me, I find the landlord submitted sufficient evidence to prove that the lease break fee was a genuine estimate of costs to re-rent the rental unit and I approve their claim for \$350.

As to the maintenance fee, I find the landlord submitted sufficient evidence to support that the tenants caused the landlord to incur costs and I approve their claim for \$20.

I also grant the landlord recovery of their filing fee of \$50.

Due to the above, I find the landlord is entitled to a monetary award of \$1520, comprised of loss of rent revenue for May 2014 of \$1100, a lease break fee of \$350, a maintenance fee of \$20, and the filing fee paid for this application in the amount of \$50.

### Conclusion

The landlord's application for monetary compensation is granted.

At the landlord's request, I direct them to retain the tenants' security deposit of \$550 in partial satisfaction of their monetary award of \$1520. I therefore grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$970, which I have enclosed with the landlord's Decision.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenants are advised that costs of such enforcement may be recoverable from the tenants.

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* and is being mailed to both the applicant and the respondents.

Dated: September 15, 2014

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Residential Tenancy Branch

