



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Wall Financial Corporation  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNDC, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent.

The landlord submitted documentary evidence to confirm that each tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on July 2, 2014 in accordance with Section 89. As per Section 90, the documents are deemed received by each tenant on the 5<sup>th</sup> day after it was mailed.

Based on the evidence of the landlord, I find that each tenant has been sufficiently served with the documents pursuant to the *Act*.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for cleaning; drapery cleaning; and lost revenue; for all or part of the security and pet damage deposits and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 45, 67, and 72 of the *Act*.

### Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on September 1, 2013 for a 6 month fixed term tenancy beginning on September 1, 2013 that converted to a month to month tenancy on March 1, 2014 for the monthly rent of \$1,025.00 due on the 1<sup>st</sup> of each month with a security deposit of \$512.50 and a pet damage deposit of \$200.00 paid.

The landlord submits the tenancy ended after the tenants provided a notice to end the tenancy to the landlord on June 2, 2014 with an effective vacancy date of June 30, 2014.

The landlord submits that despite advertising the rental unit through a number of media including online and local newspapers beginning June 3, 2014 the landlord was unable to find a suitable tenant until July 13, 2014 at which time the landlord entered into a new tenancy agreement with a new tenant for this rental unit effective August 1, 2014.

The landlord submitted into evidence a copy of a move out Condition Inspection Report as well as a document entitled "Agreement" that shows the tenant agreed the landlord could deduct \$30.00 for drapery cleaning and \$36.00 for general unit cleaning but did not agree to the charge of \$1,025.00 for lost revenue for July 2014.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Based on the documentary evidence submitted by the landlord I find the landlord had authority from the tenant to withhold \$66.00 for cleaning and drapery cleaning from the security deposit. I see no reason to alter this agreement.

Section 45(1) of the *Act* stipulates that a tenant may end a tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Based on the landlord's undisputed testimony and evidence I accept that by giving their notice on June 2, 2014 of their intent to end the tenancy the earliest their vacancy date could be was July 31, 2014. As such, I find the tenants were not compliant with Section 45(1).

As there is no evidence before me that the tenants had informed the landlord of a breach of a material term of a tenancy agreement or time to correct it I find the tenants could not end the tenancy under Section 45(3).

Therefore, I find the tenants violated the *Act* and as a result the landlord has suffered a loss of rental income, subject only the landlord's obligation to mitigate their loss.

Based on the landlord's undisputed evidence and testimony I find the landlord took reasonable steps to obtain replacement tenants within a reasonable time frame and as such have attempted to mitigate the losses they have suffered.

### Conclusion

Based on the above, I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,141.00** comprised of \$1,025.00 lost revenue; \$30.00 drapery cleaning; \$36.00 general cleaning and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and pet damage deposit held in the amount of \$712.50 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$428.50**.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: November 06, 2014

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Residential Tenancy Branch

