



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REALTY EXECUTIVES MID ISLAND  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for money owed or compensation for damage or loss under the Act, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenants.

The landlord’s agent attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord’s agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on October 10, 2014, Canada post tracking numbers were provided as evidence of service.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenants have been duly served in accordance with the Act.

The landlord’s agent appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Is the landlord entitled to monetary compensation for money owed for loss or damages?  
Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The parties entered into a fixed term tenancy which began on March 1, 2014 and was to expire on February 28, 2015. Rent in the amount of \$1,500.00 was payable on the first of each month. The tenants paid a security deposit of \$750.00. The tenancy ended on September 30, 2014.

The landlord claims as follows:

a.	Loss of rent for October 2014	\$1,500.00
b.	Filing fee	\$ 50.00
	<b>Total claimed</b>	<b>\$1,550.00</b>

The landlord's agent testified that the tenants gave notice to end the tenancy on July 22, 2014, with an effective vacancy date of September 30, 2014. The agent stated that the tenants were informed that they are under a fixed term agreement and would be responsible for loss of rent if new renters were not found. Filed in evidence is a copy of the tenants' notice to end the tenancy dated July 22, 2014.

The landlord's agent testified that they advertised the rental unit for rent on August 5, 2014, on several popular websites and continue those advertisements until a new renter was found which the new tenancy commenced on November 1, 2014. The agent stated that despite their best efforts they were unable to find a new renter for October 1, 2014. The landlord seeks to recover loss of rent for October 2014, in the amount of \$1,500.00. Filed in evidence are copies of the advertisements which support the agent's testimony.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

How to end a tenancy is defined in Part 4 of the Act.

### **Tenant's notice**

*45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*

*(a) is not earlier than one month after the date the landlord receives the notice,*

*(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*

*(c) is the day before the day in the month, or in the other period on which the tenancy is based,*

...

In this case, the evidence of the landlord's agent was that the tenants breached the fixed term tenancy by providing notice to end the tenancy on September 30, 2014. However, under the Act the tenants were not entitled to give notice to end the tenancy prior to the date specified in the tenancy agreement. I find the tenants have breach section 45(2) of the Act as the earliest date they could have legally ended the tenancy was February 28, 2015, as stated in the tenancy agreement.

However, under section 7(2) of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss.

In this case, the evidence of the landlord's agent was that they commencing advertising the rental unit for rent on August 5, 2014 and continued those advertisement until a new renter was found which the new tenancy commenced on November 1, 2014, I find the landlord made reasonable efforts to minimize the loss. Therefore, I find the landlord is entitled to recover loss of rent for October 2014, in the amount of **\$1,500.00**.

I find that the landlord has established a total monetary claim of **\$1,550.00** comprised of the above described amount and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$750.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$800.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: March 04, 2015

---

Residential Tenancy Branch

