



# 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      MNR MNSD MNDC FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The landlord, the tenant and an agent for the tenant participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

### Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

### Background and Evidence

The tenancy began on November 1, 2014 as a fixed term tenancy to end on October 31, 2015. The tenancy agreement contains a clause in which the parties agree that if the tenant ends the tenancy before the end of the fixed term the landlord is entitled to liquidated damages of \$300. Rent in the amount of \$1120, plus \$45 for parking, is payable in advance on the first day of each month. At the outset of the tenancy, the tenant paid the landlord a security deposit of \$560 and a parking fob deposit of \$50.

The landlord stated that on January 30, 2015 the tenant gave the landlord notice to vacate the rental unit by February 28, 2015. The landlord stated that the tenant did not pay rent for February 2015. The landlord provided evidence to show that they attempted

to re-rent the unit as soon as possible, but they were unable to re-rent it for March 2015. The landlord has claimed the following amounts:

- 1) \$1120 for February 2015 rent, plus \$45 for parking;
- 2) \$20 for a late payment fee for February 2015, as per the tenancy agreement;
- 3) \$300 for liquidated damages, as per the tenancy agreement; and
- 4) \$1120 for March 2015 lost revenue.

The tenant stated that there were many issues with the apartment. There were fire ants, the sinks were not working, there was very cold water in the shower, and the heater was set low but the floor was very hot. The tenant stated that he informed the landlord once in writing and several times verbally of these problems. But the landlord did nothing about it. The tenant stated that he therefore had no choice but to leave.

The landlord's response to the tenant's testimony was that when the tenant complained about the fire ants the landlord had a pest treatment done, and the landlord's contractor checked the hot and cold water and said there was nothing wrong.

### Analysis

Upon consideration of the evidence, I find that the landlord is entitled to their claim in its entirety. The tenant did not pay rent or parking for February 2015, and the landlord is entitled to those amounts as well as the late payment fee. The tenant chose to break the lease rather than apply for orders that the landlord comply with the Act or do repairs, and the landlord is therefore entitled to the liquidated damages amount. The landlord showed that they attempted to re-rent the unit as soon as possible but were unable to re-rent it for March 2015, and the landlord is therefore entitled to lost revenue for that month.

As the landlord's application was successful, they are also entitled to recovery of the \$50 filing fee for the cost of this application.

I note that the landlord retained the fob deposit even after the tenant returned the fob. I informed the landlord that there is no authority under the Act to retain a key or fob deposit once that item has been returned, and the fob deposit ought to have been immediately returned to the tenant.

Conclusion

The landlord is entitled to \$2655. I order that the landlord retain the security deposit and fob deposit of \$610 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2045. 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: March 23, 2015

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Residential Tenancy Branch

