



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LTE VENTURES INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, MNDC, O, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; other issues; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on September 08, 2014. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord's agents (the landlord) appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

- Is the landlord permitted to keep all or part of the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The landlord testified that this tenancy started on January 01, 2014 for a fixed term tenancy which was not due to expire until December 31, 2014. Rent for this unit was agreed at \$925.00 per month due on the 1<sup>st</sup> of each month in advance. The tenant paid a security deposit of \$462.50 and a key fob deposit of \$50.00 on December 20, 2013. Both parties attended the move in and move out condition inspection of the rental unit and the tenant provided a forwarding address in writing on August 31, 2014.

The landlord testified that the tenant gave notice to end the tenancy before the end of the fixed term. The amendment to the tenancy agreement has a clause which provides for a fee being charged of a sum equal to one and a half's months' rent, for liquidated damages, to cover costs and expenses to re-rent the unit if the tenant breaks the lease. The tenancy ended on August 31, 2014. The landlord testified that although they had sought to recover \$1,387.50 the landlord now amends this claim for liquidated damages to \$500.00 as this is a fair reflection of the costs incurred to re-rent the unit.

The landlord testified that they started to advertise the unit as soon as the tenant gave Notice on July 31, 2014; however, due to the condition of the unit as shown in the landlord's photographic evidence, the unit did not show well. There were 17 viewings on the unit between August 06 and October, 2014 and the unit was re-rented for October 21, 2014. The landlord seeks to recover a loss of rental income for September, 2014 of \$925.00 and a loss of rental income for October, 2014 of \$608.22.

The landlord testified that the unit was left in a dirty condition as indicated by the photographic evidence and the move out inspection report. The landlord had estimated

a cost of \$200.00 to clean the unit for eight hours; however, this work was done in less time, over six hours, and included the disposal of the tenant's mattress and garbage. The landlord therefore amends their claim for cleaning to \$150.00 and withdraws their claim for \$50.00 for disposal of large furniture.

The landlord testified that the carpets were not left in a clean condition. The carpets had to be professionally cleaned. The landlord seeks to recover cleaning costs of \$78.75. The drapes were also left unclean and the landlord seeks to recover \$89.78 for drape cleaning. The landlord has provided receipts for both the carpet cleaning and drape cleaning in documentary evidence.

The landlord seeks an Order to keep the security deposit in partial satisfaction of their amended claim.

### Analysis

The tenant did not appear at the hearing to dispute the landlord's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlord's documentary evidence and sworn testimony before me.

With regard to the landlord's claim to recover a fee for liquidated damages as the tenant was in breach of the fixed term agreement; I find the amount claimed by the landlord of \$500.00 is a fair reflection of the costs to re-rent the unit. A landlord is entitled to charge the tenants a fee of this nature when it is documented in the tenancy agreement and is a genuine pre-estimate of costs that may be incurred in re-renting the unit. I therefore uphold the landlord's claim to recover **\$500.00** from the tenant pursuant to s. 67 of the *Act*.

With regard to the landlord's claim to recover a loss of rent for September and part of October; I refer the parties to s. 45(2) of the *Act* which states:

*(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, that rent is payable under the tenancy agreement.*

The tenancy was not due to end until December 31, 2014. Therefore, the earliest the tenant could legally end the tenancy would be that date. As the tenant gave notice to end the tenancy for August 31, 2014 the tenant remains responsible to meet the terms of the tenancy agreement until such a time that the agreement ends or the unit is re-rented. I am satisfied that the landlord took steps to re-rent the unit in a timely manner; however, the unit was not re-rented until October 21, 2014. Consequently, it is my decision that the tenant is responsible for the rent until October 21, 2014 and I find the landlord has established a claim to recover a loss of rent to an amount of **\$1,533.22** pursuant to s. 67 of the Act.

With regard to the landlord's claim for carpet cleaning, drape cleaning and general suite cleaning; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;

- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the landlord has provided sufficient evidence to support their claim and they are able to meet all of the components of the above test. The photographic evidence clearly shows the condition of the rental unit at the end of the tenancy and these are supported by the comments on the move out condition inspection report. The landlord has also provided receipts for all costs incurred. Therefore, I find that the landlord's application is upheld and they are entitled to a Monetary Order to the amount of **\$318.53**, pursuant to s. 67 of the *Act*.

I Order the landlord to retain the tenant's security and key fob deposit of **\$512.50** pursuant to s. 38(4)(b) of the *Act*, in partial satisfaction of this claim. As the landlord's claim has merit I find the landlords are entitled to recover the filing fee of **\$50.00** from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Liquidated damages	\$500.00
Loss of rental income	\$1,533.22
Cleaning charges	\$318.53
Filing fee	\$50.00
Less security and key fob deposits	(-\$512.50)
Total amount due to the landlord	\$1,889.25

Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$1,889.25**. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

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 27, 2015

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Residential Tenancy Branch

