



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord on October 10, 2014 for a Monetary Order for: damage to the rental unit; for unpaid rent; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; to keep the Tenants’ security deposit; and, to recover the filing fee from the Tenants.

An agent for the Landlords (the “Landlord”) appeared for the hearing and provided affirmed testimony as well as documentary evidence in advance of the hearing. There was no appearance for the Tenants during the 30 minute duration of the hearing. As a result, I focused my attention to the service of the documents by the Landlord for this hearing.

The Landlord testified that she served each Tenant with a copy of the Application and the Notice of Hearing documents to the Tenant’s forwarding address which was provided verbally to her after the tenancy had ended. This was served by registered mail on October 15, 2014. The Landlord then amended her Application on December 18, 2015 to increase her monetary claim to \$3,840.92. The Landlord served the amended Application to each Tenant again by registered mail on December 19, 2015. The Landlord provided a copy of the Canada Post tracking numbers as evidence for this method of service.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party may not avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord, I find the Tenants were deemed served with the Landlord’s original Application on October 20, 2014, and the amended Application on December 24, 2014, pursuant to the Act.

At the onset of the hearing, the Landlord’s agent confirmed that she wanted to reduce the monetary claim she was seeking from the Tenants. The amended Application

disclosed an amount of \$3,840.92; however the Landlord amended her Application for a claim for \$3,815.97 which I permitted her to do pursuant to Section 64(3) (c) of the Act.

Issue(s) to be Decided

- Is the Landlord entitled to unpaid rent, loss of rent and a late rent fee?
- Is the Landlord entitled to the costs resulting from damage and cleaning to the rental unit?
- Is the Landlord entitled to liquidated damages?
- Is the Landlord entitled to keep the Tenants' security deposit in partial satisfaction of the Landlord's monetary claim?

Background and Evidence

The Landlord testified that this tenancy started on April 1, 2014 and was for a fixed term of one year which was due to expire on March 31, 2015. However, the Tenants abandoned the rental suite on or before September 12, 2014. Rent under the tenancy agreement was payable by the Tenants in the amount of \$950.00 on the first day of each month. The Tenants paid a security deposit in the amount of \$475.00 by March 24, 2014 which the Landlord still retains as no forwarding address has been provided by the Tenant to the Landlord in writing.

The Landlord testified that a move in Condition Inspection Report (the "CIR") was completed with the Tenants on March 27, 2014. The Landlord testified that the Tenants failed to pay rent on September 1, 2015 in the amount of \$950.00. The Landlord attempted several times to contact the Tenants without success. However, on September 12, 2015 the Landlord finally got in touch with one of the Tenants who informed her that they had vacated the rental suite for personal reasons. The Landlord advised that the parties should meet to complete the move out CIR and the Landlord suggested that this should take place on September 12, 2014. However, the Tenant explained that this date was not suitable so the Landlord suggested that it should be done on September 16, 2015.

The Landlord testified that she posted a notice of final opportunity to conduct the move out CIR on the Tenants' door but there was no response. As a result, the Landlord completed the move out CIR on September 18, 2014 in the absence of the Tenants. The Landlord provided a copy of the CIR into evidence and referred to this in her testimony of damages and cleaning caused by the Tenant at the end of the tenancy. The Landlord testified that the Tenants left the place dirty and nearly every surface in the rental suite had to be cleaned. The Landlord testified that the carpets were not

cleaned and left filthy by the Tenants and a large amount of Tenants' junk had been removed from the rental unit and disposed of. The Landlord provided three receipts for the costs incurred to clean the rental unit, shampoo the carpets, and remove the junk left behind. As a result, the Landlord claims a total amount of **\$440.97** for these three items as verified by the receipts.

The Landlord testified that the Tenant did not pay rent for September 2014. When the Landlord discovered from the Tenants on September 12, 2014 that they had abandoned the rental unit, she placed advertisements for the rental unit starting on September 15, 2014 in an effort to mitigate loss. These advertisements were provided into evidence and comprised of on line rental websites such as Craigslist as well as multiple advertisements in the local paper.

The Landlord testified that despite these advertisements, she was unable to re-rent the rental unit for the remainder of September, October and November 2014. As a result, the Landlord now claims for unpaid rent for September 2014 in the amount of \$950.00 and two months of lost rent for October and November 2014. The Landlord's agent referred to Section 5 of the signed tenancy agreement subtitled "LIQUIDATED DAMAGES". This clause states the following:

*"If the tenant ends the fixed term tenancy...the tenant will pay to the landlord the sum of \$500.00 as liquidated damages and not as a penalty."*

[Reproduced as written]

As a result, the Landlord now seeks to also claim, **\$500.00** in liquidated damages and **\$2,850.00** in unpaid and lost rent for the months of September, October and November 2014.

The Landlord then referred to section 10 of the written tenancy agreement which requires the Tenant to pay a late rent fee of \$25.00. As a result, the Landlord now claims \$25.00 for the late rent fee relating to the month of September 2014 when the Tenants were still occupying the rental unit. In total, the Landlord now seeks to recover from the Tenants **\$3,815.97** (\$440.97 + \$500.00 + \$2,850.00 + \$25.00).

### Analysis

Fixed term tenancies are designed to strictly prohibit a tenant or landlord from ending the tenancy without authority under the Act. In this case, I accept the Landlord's evidence that the Tenants broke the fixed term tenancy by abandoning the rental unit on

or before September 12, 2014. Policy Guideline 4 to the Act defines liquidated damages as:

*“A clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into...”*

[Reproduced as written]

The Tenants signed the tenancy agreement which contained a liquidated damages clause, as detailed above. Therefore, I find the Tenants are liable to pay to the Landlord liquidated damages in the amount of **\$500.00** as required by the tenancy agreement.

When a tenant breaks a fixed term tenancy, the landlord is required under Section 7(2) of the Act to take reasonable steps to mitigate loss. After this, the Tenant would then be responsible, in addition to the liquidated damages, for any further losses of the Landlord such as lost rent. In analyzing the Landlord's claim for unpaid and lost rent, I find that the Landlord has provided sufficient evidence to show that efforts were made to re-rent the rental suite immediately after the Landlord became aware that the Tenants had abandoned the rental unit. I accept the Landlord's evidence that the Tenants failed to pay rent for September 2014 and that she was not able to re-rent the rental unit until December 1, 2014. As a result, I award the Landlord unpaid and lost rent in the amount of **\$2,850.00** claimed.

Section 7(1) (d) of the Residential Tenancy Regulation allows a landlord to charge an administration fee up to \$25.00 for late payment of rent if the tenancy agreement provides for this fee. The Landlord provided a copy of the tenancy agreement which provides for this fee. As the Tenant failed to pay any rent for September 2014, I find the Landlord is entitled to the **\$25.00** late rent fee claimed.

Section 37(2) of the Act requires a tenant to leave a rental suite reasonably clean and undamaged at the end of a tenancy. Section 21 of the *Residential Tenancy Regulation* allows a CIR to be considered as evidence of the state of repair and condition of the rental unit, unless a party has a preponderance of evidence to the contrary.

The Tenants provided no evidence prior to the hearing to dispute the CIR. Therefore, I rely on the undisputed testimony of the Landlord and the move out CIR. I find that on the balance of probabilities the Tenants failed to clean the rental suite and clean the carpets after they had vacated it. I also accept the Landlord's evidence that they had to

clean and remove junk left behind by the Tenants. Therefore, the Landlord is awarded **\$440.97** for these costs.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenants the **\$50.00** filing fee for the cost of this Application pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenants to the Landlord is **\$3,865.97** (\$440.97 + \$500.00 + \$2,850.00 + \$25.00 + \$50.00).

As the Landlord already holds \$475.00 in the Tenants' security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 72(2) (b) of the Act.

As a result, the Landlord is issued with a Monetary Order for the remaining amount of **\$3,390.97** (\$3,865.97 - \$475.00). This order must be served on the Tenants and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenants fail to make payment. Copies of this order are attached to the Landlord's copy of this decision.

### Conclusion

The Tenants breached the Act by ending the fixed term tenancy early and causing loss of rent to the Landlord as well as cleaning and junk removal costs. Therefore, the Landlord may keep the Tenants' security deposit and is granted a Monetary Order for the remaining balance in the amount of **\$3,390.97**.

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: May 28, 2015

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Residential Tenancy Branch

