



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MNR, MNSD, MNDC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, for loss of rent, for compensation under the Act and the tenancy agreement, for damage and cleaning of the rental unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Landlord appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified that she served the Landlord's application materials by registered mail on October 10, 2014. Section 90 of the *Act* provides that documents served in this way are deemed served five days later. Accordingly, I find that the Tenant was served as of October 15, 2014.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

### Background and Evidence

This fixed term tenancy began December 1, 2013. The monthly rent was \$1,725.00 and the Tenant paid a security deposit of \$862.50 on November 15, 2013. The tenancy ended on March 20, 2014.

The Landlord confirmed that a tenancy agreement existed; however, it was not submitted in evidence. The Landlord testified that the rental unit was a “stand alone” house and that the Tenant was responsible for paying all utilities, including water and electricity. The Landlord testified that at the date the Tenant vacated the rental unit, she owed for the water and electrical utilities. Introduced in evidence were copies of receipts for these two items.

The Landlord further testified that the condition of the rental unit was such that they incurred costs to clean the yard, remove garbage and professionally clean the carpets. Receipts for these items were also introduced in evidence.

In addition to the above, the Landlord also sought compensation for the cost of internet advertising; notably, no receipts for this advertising were provided. The Property Manager, K.D., who appeared on behalf of the Landlord, testified that the standard operating procedure is to advertise on the company website, as well as popular internet advertising sites. She confirmed that the requested amount, namely: \$105.00 was incurred by the Landlord.

Finally, the Landlord sought compensation for the cost to perform a credit check on the new tenant.

In summary, the Landlord claims as follows:

Loss rental income for May 2014	1,725.00
Water bill arrears	222.68
Electrical utility arrears	79.77
Yard clean up	214.00
Garbage removal	73.00
Professional carpet cleaning	110.00
Internet advertising recovery invoice	105.00
Credit check for incoming tenant	14.70
Filing fee	50.00
<b>Total claimed</b>	<b>2,594.15</b>

The Landlord testified that a previous arbitration occurred on August 12, 2014 at which time the Landlord withdrew their application. The presiding Arbitrator, in her written decision also dated August 12, 2014, noted as follows:

*“Therefore, the landlord’s application was withdrawn. The landlord has liberty to reapply; this is not an extension of any statutory deadline.”*

### Analysis

The security deposit is held in trust for the Tenants by the Landlord. At no time does the Landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If the Landlord and the Tenant are unable to agree to the repayment of the security deposit or to deductions to be made to it, the Landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

Although the Landlord initially applied arbitration within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, that application was withdrawn. My fellow arbitrator confirmed that the timelines were not extended as a consequence of the withdrawal of the Landlord’s application.

The Landlord made the within application on October 10, 2014. Accordingly, I find that the Landlord failed to make the application to retain a portion of the security deposit within the time limits imposed under section 38 of the *Act*.

The Landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from an Arbitrator, or with the written agreement of the Tenant. Here the Landlord did not have any authority under the *Act* to keep any portion of the security deposit. Therefore, I find that the Landlord is not entitled to retain any portion of the security deposit.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the *Act*, that the Landlord pay the Tenants the sum of **\$1,725.00**, comprised of double the security deposit (2 x \$862.50 ).

As noted during the hearing, despite having no claim against the security deposit, the Landlord may still pursue monetary compensation pursuant to section 67 of the *Act*.

Awards for compensation are provided in sections 7 and 67 of the *Act*.

In this instance, the burden of proof is on the Landlords to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or

damage. Finally it must be proven that the Landlords took reasonable steps to minimize the damage or losses that were incurred.

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

I find the Tenant, in breaching the fixed term tenancy agreement, caused the Landlord to lose rental income for the month of May 2014. I find that the Landlord, in advertising the rental unit immediately after the tenancy ended, took reasonable steps to minimize their loss. Accordingly, I grant the Landlord's request for compensation for lost rent for May 2014.

I also accept the undisputed testimony of K.D. that the Tenant was responsible for paying the water and electrical utility charges and that those amounts remained outstanding at the end of the tenancy. The Landlord is entitled to recover those costs.

I further accept the testimony of K.D. that the Tenant did not clean the unit as required under the *Act* and this has caused losses to the Landlord. The receipts submitted in evidence support the Landlord's claims for reimbursement.

Further, I find that the Landlord incurred the cost of advertising on the internet as such advertising was necessary to rent the rental unit and to minimize any loss. Although the receipt introduced in evidence was issued by the Landlord to themselves, I accept the undisputed testimony of K.D. that the amount claimed was actually incurred by the Landlord.

I decline the Landlord's claim for recovery of the cost to perform a credit check for incoming tenants. This is a business choice by the Landlord which is not recoverable under the *Act*.

I grant the Landlord's request for monetary compensation for the following expenses:

Loss rental income for May 2014	1,725.00
Water bill arrears	222.68
Electrical utility arrears	79.77
Yard clean up	214.00
Garbage removal	73.00
Professional carpet cleaning	110.00
Internet advertising recovery invoice	105.00
Filing fee	50.00

<b>Total awarded</b>	<b>\$2,579.45</b>
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As I have found that the Landlord must return double the security deposit in the amount of \$1,725.00 the amounts are to be offset against one another such that the Tenants shall pay the Landlord the sum of **\$854.45**. The Landlord is granted a Monetary Order in this amount. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

#### Conclusion

The Landlord filed the within application after the 15 days provided for in section 38. Accordingly, the Landlord must return double the security deposit.

The Landlord established a monetary claim in the amount of \$2,579.45 which is offset against the security deposit such that the Landlord is granted a Monetary Order for the sum of **\$854.45**, which includes recovery of the filing fee.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 20, 2015

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Residential Tenancy Branch

