



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MND, MNDC, MNSD

### Introduction

This hearing convened as a result of the Landlord's Application for Dispute Resolution wherein the Landlord requested a Monetary Order for the following: damage to the rental unit; unpaid rent or utilities; money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to keep all or part of the pet damage deposit or security deposit; and, to recover the filing fee.

The hearing commenced on March 24, 2015 and continued on May 11, 2015. Both parties appeared at the hearings. The Landlord was assisted by an agent, Y.Z. The Tenant M.T. appeared on his own behalf and as agent for the Tenant E.J. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

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

1. Is the Landlord entitled to monetary compensation from the tenants?
2. Should the Landlord recover the fee paid to file his application?

### Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement, dated, December 1, 2013, which indicated the following: the nine month fixed term tenancy began December 1, 2013 and was to end on August 31, 2014; rent was payable in the

amount of \$1,450.00 per month on the first of each month; the Tenants paid a security deposit of \$725.00 on November 25, 2013; and the Tenants paid a pet damage deposit of \$725.00 on January 1, 2014.

Also introduced in evidence was a copy of the incoming and outgoing Condition Inspection Report.

The parties agree that the Tenants failed to remain for the term of the fixed tenancy and instead vacated the rental unit as of April 27, 2014. Introduced in evidence was a copy of an email from the Tenants to the Landlord dated April 27, 2014 wherein the Tenants confirmed they agreed to forfeit their security and pet damage deposit to cover May's rent.

The Landlord submitted that they were not able to rent the rental unit for May, June, July and August 2014 and as such seek compensation from the Tenants for these months. The Landlord also sought the late payment fee of \$25.00 for each of these months.

Neither party provided any evidence or submissions on whether or not the Tenants were offered an opportunity to sublease the rental unit.

In response to my queries as to whether the LL advertised the rental unit, Y.Z. testified that the Landlord advertised on a popular internet site, as well as posting flyers at the local university, and two colleges. Introduced in evidence were copies of the ads as well as a document titled "statistics on showings" wherein the Landlord claimed three showings occurred in May, four in June, five in July and four in August. Also included in this document was the following:

...

*Main reasons property not rented (feedback from people that cared to write or call back): Living room is too small, no dining room, ground floor – security and privacy concerns, need for school year as of September 1, low income housing in front of property.*

...

Also introduced in evidence by the Landlord was an email from prospective tenants sent on July 23, 2014 wherein the prospective tenants queried whether the Landlord would accept lower rent. There was no evidence provided which would indicate whether the Landlord responded to this question. Further, there was no evidence that the Landlord considered accepting less than the advertised rent.

During the hearing Y.Z. stated that the rental unit was advertised at the same rate as it was rented to the Tenants. When it was brought to Y.Z.'s attention that the material submitted indicated the advertised rate was \$1,500.00, Y.Z. responded that the \$50.00 was added for "negotiating purposes".

The Landlord claimed reimbursement for outstanding gas utilities. Introduced in evidence was a copy of an invoice dated April 9, 2014 which indicated that the sum of \$125.24 owing for January, February and March 2014. The Landlord also introduced an invoice for the months April, May and June 2014 in the amount of \$71.79. The total outstanding gas bills for which the Landlord sought reimbursement was for the sum of \$197.03.

The Landlord also sought compensation for the cost of an invoice relating to repairs and cleaning of the rental unit after the Tenants vacated. Introduced in evidence was a copy of an invoice dated May 15, 2014 totaling \$957.08. Also introduced were photos of the alleged damage and areas which required cleaning.

The Landlord also sought the sum of \$119.70 for compensation for the cost incurred to clear the bathtub drain.

The Landlord sought the sum of \$112.00 as the estimated cost to replace the bathroom cabinet. Y.Z. submitted that the Tenants did not use the exhaust system in the bathroom which caused excess moisture and resulting damage. At the hearing Y.Z. confirmed the cabinet had not yet been purchased and as such the expense had not in fact been incurred.

In summary, the Landlord claims as follows:

Loss of rent for May, June, July and August 2014	\$5,800.00
Late fee for May, June, July and August 2014	\$100.00
Outstanding gas utility bills	\$197.03
Cost of cleaning rental unit and repairing damage	\$931.88
Bathtub drain clearing	\$119.70
Estimated replacement cost of bathroom cabinet	\$112.00
Filing fee	\$100.00
<b>Total claimed</b>	<b>\$7,360.61</b>

The Tenants confirmed they were agreeable to paying the May 2014 rent, but opposed the Landlord's claim for June, July and August lost rent. M.T. submitted that the Landlord did not mitigate their loss for the following reasons:

- the Landlord advertised the rental unit at \$1,500.00 per month, which is \$50.00 more per month than the Tenants paid; and,
- the Landlord advertised the rental unit as a three bedroom condo, when in fact the rental unit is a two bedroom. The Tenants submit that the third bedroom is in fact the living room, which the Landlord blocked off with a door and installed a movable wardrobe.

M.T. further submitted that as they agreed the Landlord could use their security and pet damage deposit towards the May 2014 rent that no late fee should apply. The Tenants opposed the Landlord's request of late fees for June, July and August 2014.

M.T. further confirmed they were agreeable to paying \$125.24 for the gas bill for the months they were in occupation of the rental unit. The Tenants opposed paying for the balance claimed by the Landlord.

In terms of the \$931.88 claimed by the Landlord for alleged cleaning and repairing of damage of the rental unit, the Tenants disputed this amount and claimed they left the rental unit in better condition than when they first moved in. They further claimed the move in inspection report was inaccurate in that it did not include preexisting damage for which the Landlord was now trying to claim reimbursement. The Tenants confirmed they removed the door and moved the wardrobe from the "3<sup>rd</sup> bedroom/living room area". The Tenants also claimed that they did not professionally clean the carpets as they had not been professionally cleaned prior to them moving in.

The Tenants opposed the cost associated with the bathtub drain clearing as they claimed the drain worked well while they were living in the rental unit and there was no evidence the drain was plugged when they moved. They submitted that any extensive drain cleaning would have been required due to the Landlord's lack of drain maintenance.

The Tenants opposed the Landlord's request for compensation for the estimated cost to replace the bathroom cabinet, noting that the cabinet was left in the same condition as when they moved in, that it did not require replacing, and that the Landlord had not in fact replaced the cabinet and should therefore be precluded from claiming compensation for an expense not incurred.

At the conclusion of the May 11, 2015 hearing, I asked the Landlord to provide a copy of the floor plan by no later than May 13, 2015. I also asked the Tenants to provide their response, if any, to the floor plan submitted, and to do so by no later than May 15, 2015. Both parties complied with my request.

### 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.

The majority of the disputed claim involved the Landlord's request for compensation for lost rent for the remaining months of the fixed term tenancy. Accordingly, I will address this claim first.

Part 4 of the *Residential Tenancy Act* deals with means by which to end a tenancy; section 45(2) provides as follows.

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

In this case, the parties agreed that the Tenants breached the fixed term tenancy and accordingly, the Tenants have breached section 45(2) of the *Act* as the earliest date they could have legally ended the tenancy was August 31, 2014 as stated in the tenancy agreement.

The Landlord is entitled to an amount sufficient to put the Landlord in the same position as if the Tenants had not breached the *Act*. This includes compensating the Landlord for any loss of rent up to the earliest time that the Tenants could have legally ended the tenancy.

However, the Landlord has a duty to mitigate or minimize their loss pursuant to section 7(2) of the *Act*, which provides that the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss.

The duty to minimize the loss begins when the party entitled to claim damages becomes aware that damages are occurring. In this case, the Landlord had notice on April 27, 2014. Failure to take the appropriate steps to minimize the loss will have an effect on a

monetary claim, where the party who claims compensation can substantiate such a claim.

There was no evidence that the Landlord attempted to negotiate a lower rent with prospective tenants. Had the Landlord done so, he would have minimized his losses. In fact, it is clear the Landlord advertised the rental unit at a higher price. Further, the Landlord's own evidence, namely the email from a prospective tenant, indicates prospective tenants were interested in negotiating a lower rent; yet there is no evidence the Landlord availed himself of this opportunity. Had the Landlord negotiated a lower rent, the difference in rent received as opposed to the rent which would have been payable by the Tenants could have been recovered.

The Tenants alleged the Landlord misled prospective tenants by advertising the rental unit as a three bedroom. While I accept the evidence of the Landlord that the subject Tenants rented the unit as a three bedroom, the Landlord's own evidence suggests that the lack of dining room and size of the "living room area" was a deterrent to prospective tenants. The Landlord also confirmed that the room which the Tenants claimed was in fact the living room, did not have a dedicated closet, hence the addition of the removable wardrobe. This suggests to me that the room is more properly characterized as a living/dining room, rather than bedroom. The amount of rent sought, namely \$1,450.00, while more reasonable for a three bedroom, may have been a deterrent for tenants who also viewed the rental as a two bedroom rental unit.

I find that the Landlord's advertising efforts were insufficient and accept the Tenant's submissions that they appeared to be targeted to a student population. As students require accommodation only during the school year, it is not surprising the Landlord did not secure a tenant until September 2014.

In all the circumstances, I find the Landlord failed to take adequate steps to mitigate his loss and is therefore only entitled to recover unpaid rent for the month of May 2014. As the Tenants agreed to relinquish their claim to their deposits, these amounts are to be applied to the outstanding rent and as such no late fee can be claimed for May 2014.

The Landlord's claim for compensation for rental loss for June, July and August, as well as late fees for May, June, July and August is denied.

The Tenants agreement to pay the gas bill in the amount of \$125.24 is recorded in this my decision pursuant to section 63 of the *Act*. As the Tenants agreed to pay rent for May 2014, I also award the Landlord \$47.86 in compensation for the gas bill for April and May 2014. The \$71.79 bill submitted by the Landlord included June 2014; while no

breakdown was provided I simply divided this figure by three to arrive at the sum of \$47.86. I find that the total recoverable by the Landlord of the gas utility is **\$173.10**.

I accept the Landlord's claim that the Tenants did not adequately clean the rental unit, or make the necessary repairs and this has caused losses to the Landlord. I accept the Landlord's evidence that the Condition Inspection Reports accurately detail the condition of the rental unit at move in and move out. Section 21 of the *Residential Tenancy Regulation* provides that a condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection unless either party has a *preponderance of evidence to the contrary*. In this case, the Tenants did not submit evidence which would displace the evidentiary value of the condition inspection report. Accordingly, I award the Landlord **\$931.88** as claimed.

I accept the Tenant's evidence that the bathtub was not plugged when they moved out. I find that the Landlord has failed to prove that the tub drain cleaning was due to the actions or neglect of the Tenants in violation of the *Act* or agreement. I find that the drain cleaning was likely more extensive drain maintenance which is not recoverable.

I decline the Landlord's request for compensation for the estimated cost to replace the bathroom cabinet as this expense appears not to have been incurred. Further, the photos submitted by the Landlord do not convince me that the cabinet required replacement.

As the Landlord has been substantially successful, I award him the \$100.00 filing fee.

In summary, I award the Landlord the sum of \$2,654.98 for the following:

Loss of rent for May 2014	\$1,450.00
Gas bills	\$173.10
Cost of cleaning rental unit and repairing damage	\$931.88
Filing fee	\$100.00
<b>Total claimed</b>	<b>\$2,654.98</b>

I order that the Landlords retain the security and pet damage deposit in the amount of **\$1,450.00** in partial satisfaction of the claim and I grant the Landlords an order under section 67 for the balance due of **\$1,204.98**.



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

### Conclusion

The Landlord failed to mitigate his loss when the Tenants breached the fixed term tenancy. The Landlord is entitled to only one month's lost rent.

The Landlord's claim for compensation for the outstanding gas utility bill is awarded in part.

The Landlord's claim for reimbursement for the cost of cleaning and repairing the rental unit, save and except for the drain cleaning and bathroom cabinet replacement, is granted.

The Landlord is entitled to recover the fee paid to file his application.

The Landlord may apply the security and pet damage deposit to the amounts awarded and is granted a Monetary Order for the balance due in the amount of **\$1,204.98**.

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

