



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Landmark Realty Mission Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing dealt with a claim by the landlord for a monetary order and an order authorizing them to retain the security deposit. The hearing originally convened on August 26, 2015 with both parties in attendance. At that time, both parties indicated that they had further evidence and agreed that an adjournment was appropriate. The hearing was reconvened on this date and again, both parties were in attendance. The landlord did not submit any further evidence and the tenants claimed that they submitted evidence one day prior to the hearing, but at the time of the hearing, that evidence had not been forwarded to me by the Residential Tenancy Branch.

### Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The parties agreed that the tenancy began December 1, 2011 at which time the tenants paid a \$750.00 security deposit and ended on February 28, 2015. The landlord claimed that the tenants damaged the rental unit and seeks compensation for the depreciated value of various elements of the unit. The parties agreed that the rental unit was sold to a third party and the landlord testified that she did not complete repairs prior to the sale and that she was unable to provide evidence showing that the home sold for less than it would have had it not been damaged.

### Analysis

The *Residential Tenancy Act* (the “Act”) establishes the following test which must be met in order for a party to succeed in a monetary claim.

1. Proof that the respondent failed to comply with the Act, Regulations or tenancy agreement;
2. Proof that the applicant suffered a compensable loss as a result of the respondent’s action or inaction;
3. Proof of the value of that loss; and (where applicable)
4. Proof that the applicant took reasonable steps to minimize the loss.

As the landlord is unable to prove the second element of the test, that she suffered a compensable loss as a result of any breach (and I make no finding on whether the tenants breached the Act), I find that it is not possible for her to prove her claim and accordingly the claim is dismissed.

As the landlord has no right to retain the security deposit, I order her to return the deposit to the tenants forthwith. I grant the tenants a monetary order under section 67 for \$750.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The claim is dismissed and the tenants are granted a monetary order for \$750.00, the amount of the security deposit.

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: November 3, 2015

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Residential Tenancy Branch

