



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The two tenants, male and female, did not attend this hearing, which lasted approximately 58 minutes. The landlord's agent, MC ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he is the realtor for the landlord named in this application and that he had authority to represent her as an agent at this hearing.

The landlord testified that the tenants were each served with a separate copy of the landlord's application for dispute resolution hearing package ("Application") on September 15, 2015, by way of registered mail to the tenants' forwarding address provided in the move-out condition inspection report. The landlord provided two Canada Post receipts and tracking numbers with the Application. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's Application on September 20, 2015, five days after their registered mailings.

At the hearing, the landlord confirmed that he did not wish to pursue the landlord's claim of \$204.75 for carpet cleaning and \$200.00 for repairs to the front door, as both tasks were not completed for this unit. Accordingly, these portions of the landlord's Application are dismissed without leave to reapply.

### Issues to be Decided

Is the landlord entitled to a monetary award for damage to the rental unit and for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenants' security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this Application from the tenants?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

The landlord testified that this tenancy began on March 1, 2015 and was for a fixed term to end on March 31, 2016, after which the tenants were required to move out. Monthly rent in the amount of \$3,225.00 was payable on the first day of each month. A security deposit of \$1,812.50 was paid by the tenants and the landlord returned \$200.00 from this deposit to the tenants to account for the FOB keys. The landlord continues to retain \$1,612.50 from the tenants' security deposit. The landlord provided a copy of the written tenancy agreement with this Application. The landlord confirmed that the rental unit is five years old and approximately 1,147 square feet with two bedrooms and two bathrooms.

The landlord indicated that move-in and move-out condition inspections and reports were completed for this tenancy. The landlord provided a copy of both reports. The landlord stated that no written permission was given by the tenants to keep any part of their security deposit and an application to retain it was made on September 14, 2015 and amended on September 15, 2015.

The landlord testified that the tenants vacated the rental unit on August 31, 2015. The landlord confirmed that the tenants provided an email, dated August 6, 2015, to move out of the unit by August 31, 2015. The email indicates that the landlord asked the tenants to move out for reasons they did not agree with, the landlord did not respond to the tenants and refused the tenants fighting a strata fine instigated by the landlord. The landlord explained that the landlord did not ask the tenants to move out, the landlord asked the tenants to stop renting out the unit through "airbnb" because of strata fines

and the tenants decided to leave. The landlord maintained that the strata company was advised by the landlord that the tenants wanted to dispute the strata fine but the strata company told the landlord that they would not hear from the tenants.

The landlord seeks \$200.00 for a strata bylaw violation fine that the landlord paid on behalf of the tenants. The landlord provided a letter from the strata company for this amount. The letter indicates that the tenants breached the bylaw of renting their unit to other tenants for less than a one month period. The landlord provided emails and advertisements from an airbnb website indicating that the tenants were subletting the rental unit for periods shorter than one month without written permission from the landlord. The above documents include photographs of the male tenant, comments from the male tenant, photographs of the rental unit and references from other tenants indicating that they stayed at the rental unit for short periods of time.

The landlord seeks a loss of rent for two months from September to October 2015, totalling \$6,450.00. The landlord claimed that unit was sold approximately three weeks prior to this hearing date because no new tenants were found to rent the unit. The landlord claims for losses under clause 8 of the addendum to the tenancy agreement which states that if the tenants end their tenancy prior to the fixed term date, the landlord has the right to claim for "damage" against the tenants.

The landlord claims for realtor agent fees of \$1,625.00 for advertising and showing the rental unit. The landlord provided an invoice and a copy of a cheque to show that it was paid by the landlord. The landlord stated that reasonable efforts were made to re-rent the unit after the tenants vacated on August 31, 2015. The landlord stated that he personally listed the rental unit online on one free website. The landlord indicated that a sign was also posted on the bulletin board inside the rental building and that word-of-mouth advertising was done by his office. The landlord provided a copy of the advertisement, which was posted on August 31, 2015. The landlord testified that no reduction in the rental price was made at any time because the price was already low enough as compared to similar units in the area. The landlord testified that the unit was shown by him to potential tenants. The landlord maintained that the unit likely took longer to re-rent because the monthly rent was expensive and potential tenants told him this during the showings. The landlord also said that it is hard to find potential tenants at the beginning of the fall season and that the unit does not have a balcony. The landlord said that the landlord ultimately decided to sell the rental unit because she was losing money from not having it rented for so many months.

The landlord seeks \$300.00 for drywall repairs, cleaning and new lightbulbs that the tenants failed to replace when they vacated. The landlord indicated the above items in

the move-out condition inspection report, but did not indicate any estimated costs for same. The landlord did not provide receipts or invoices for the above costs. The landlord stated that he completed the above work himself.

### Analysis

#### Loss of Rent

I find that the landlord and tenants entered into a fixed term tenancy for the period from March 1, 2015 to March 31, 2016.

Subsection 45(2) of the Act sets out how tenants may end a fixed term tenancy:

*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 above provision states that the tenants cannot give notice to end the tenancy before the end of the fixed term. If they do, the tenants could be liable to pay for a loss of rent to the landlord, in addition to other damages. In this case, the tenants vacated the rental unit on August 31, 2015, before the completion of the fixed term on March 31, 2016. As such, the landlord is entitled to compensation for losses she incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the Act.

Section 7(1) of the Act establishes that tenants who do not comply with the Act, Regulation or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the Act places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the Act to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable, to re-rent the premises after receiving written notice of the tenants' intention to vacate the rental unit. The landlord posted an online rental advertisement, a sign in the rental building and word-of-mouth advertising. However, I find that the

landlord has not attempted to fully minimize her losses. The landlord only advertised on one website, rather than multiple websites, and did not reduce the monthly rent of the unit, as incentives to try to attract potential tenants. The landlord also waited until August 31, 2015 to advertise the unit rather than immediately on August 6, 2015 or shortly thereafter, when she received notice from the tenants to vacate. As such, I find that the landlord has failed to fully mitigate her losses under section 7(2) of the *Act*.

The landlord is claiming for two months of rental loss from September to October 2015, the period during which the property could not be re-rented due to the tenants' breach. Clause 8 of the addendum to the tenancy agreement states that the landlord may claim for damage if the tenants vacate prior to the end of the fixed term. I find that the tenants breached the fixed term tenancy agreement, vacated without proper notice to the landlord and that they are responsible for the losses suffered by the landlord. Accordingly, I find that the landlord is entitled to a full month's rent for September 2015 in the amount of \$3,225.00 and a half month's rent for October 2015 in the amount of \$1,612.50. I make these findings on the basis that two months is a reasonable period of time to advertise, show and re-rent the rental unit. I have also accounted for the fact that there are other factors which affected the rental of the unit, such as the expensive rent. I find that the landlord is entitled to a full month's rent for September 2015 because the landlord was entitled to at least one full month's written notice from the tenants and only received notice on August 6, 2015 for the tenants to vacate effective on August 31, 2015. I find that the landlord is only entitled to half a month's rent for October 2015 because she failed to fully mitigate her losses, as noted above.

### Liquidated Damages

Residential Tenancy Policy Guideline 4 provides information regarding liquidated damages. A liquidated damages clause is 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, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

I find that the cost of re-renting a unit to new tenants is part of the ordinary business of a landlord. Throughout the lifetime of a rental property, a landlord must engage in the process of re-renting to new tenants numerous times. In this case, the landlord opted to hire a realtor to post a free online advertisement and show the rental unit. The landlord did not indicate in the tenancy agreement or the addendum to the tenancy agreement that she would be seeking liquidated damages from the tenant in the event of a breach of the fixed term. The landlord also did not indicate an amount for the pre-estimate of

the loss. For the above reasons, I dismiss the landlord's claim of \$1,625.00 for realtor fees.

Other Relief

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage and show the steps taken to minimize the loss or damage being claimed.

In summary, the onus is on the landlord to prove, on a balance of probabilities, the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the landlord's claim for cleaning, drywall and burnt lightbulbs in the amount of \$300.00 without leave to reapply. I find that the landlord could not provide a proper monetary breakdown for each portion of the above claims. I also find that the landlord did not meet condition #3 of the test above, as she failed to provide any invoices or receipts for the claimed amounts.

I award the landlord \$200.00 for the strata bylaw violation fine. The landlord paid for this fine on behalf of the tenants. I find that the landlord provided documentary evidence that the tenants were subletting the rental unit without the landlord's written permission, for less than one month periods, through the airbnb website. The landlord provided copies of the advertisements, comments, and strata bylaw violation letter.

The landlord continues to hold a portion of the tenants' security deposit in the amount of \$1,612.50. In accordance with the offsetting provisions of section 72 of the *Act*, I allow

the landlord to retain \$1,612.50 from the tenants' security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was only partially successful in this Application, I find that she is not entitled to recover the \$100.00 filing fee paid for the Application.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$3,425.00 against the tenants. The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord's Application for damages and losses of \$204.75 for carpet cleaning, \$200.00 for repairs to the front door, \$1,625.00 for realtor fees, and \$300.00 for drywall, cleaning and burnt lightbulbs are dismissed without leave to reapply.

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 24, 2016

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Residential Tenancy Branch

