



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            MNDC

### Introduction

This hearing dealt with a tenant's application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

This hearing was held over two dates. An interim decision was issued after the first hearing date and should be read in conjunction with this decision. During the period of adjournment a copy of the tenant's evidence package was received by the Residential Tenancy Branch and I was satisfied that it was a copy of the package that had been served upon the landlords, along with a copy of the tenancy agreement, as authorized.

### Issue(s) to be Decided

Have the tenants established an entitlement to compensation from the landlords for damage or loss under the Act, regulations or tenancy agreement?

### Background and Evidence

The parties entered into a fixed term tenancy agreement that was set to commence April 1, 2015 and end on May 31, 2016. The monthly rent was set at \$3,500.00 payable on the first day of every month.

Following an email received by the landlords on November 1, 2015 the parties executed a Mutual Agreement to End a Tenancy form (the Mutual Agreement) on November 4, 2015. The Mutual Agreement indicates that the tenants will vacate the rental unit on November 30, 2015 and the tenancy agreement will legally terminate at this time. The parties added and initialled two additional terms on the Mutual Agreement document: "Tenant agrees to pay rent for December 2015" and "Landlord agrees to return all or part of Dec rent if all of part of month rented." The tenants paid the landlords \$3,500.00 for December 2015 as agreed.

By way of this application, the tenants seek return of the \$3,500.00 they paid to the landlords as part of their Mutual Agreement. Below, I have summarized the parties' respective positions.

The tenant acknowledged that the rental unit was not rented for the month of December 2015; however, the tenants' seek return of the \$3,500.00 on the basis that that the landlords did not sufficiently mitigate the loss of rent and the tenant suggested the landlords did not have a true intention of finding replacement tenants. The tenants submitted the following:

1. The landlords could have made more effort to find replacement tenants. The landlords advertised the rental unit on free websites and for more money (\$3,900.00) and did not enlist the services such as a property management company or rental agency.
2. The landlords moved into the rental unit in December 2015.
3. The landlords put the house for sale in early January 2016 and sold the property in a matter of days.

The tenant explained that they approached the landlords about ending the tenancy because they were dissatisfied with the condition of the property (fridge and dishwasher not working properly and mould), and its location (due to nearby construction) and an opportunity to purchase their own property came up very quickly. The tenant stated that the landlords did not inform them of the on-going construction in the neighbourhood before the tenancy formed.

The landlord submitted that it was the tenants who sought to breach the fixed term tenancy agreement and the tenants gave notice of their intention to end the tenancy that would not be sufficient for even a month-to-month tenancy. The landlord was of the position that agreeing to end the fixed term tenancy early in exchange for payment of December 2015 rent was reasonable in the circumstances. The landlord pointed out that had he made a claim against the tenants for loss of rent for the remainder of the fixed term he would have to establish that he made reasonable efforts to mitigate losses, but that the landlords are not the claimants in this case.

The landlord was also of the position that reasonable efforts were made to re-rent the unit. The landlords advertised the unit for rent on-line and the advertised rate was not out of line considering the parties had negotiated a lower rent for the tenancy than the landlords had received for the furnished unit in the past. The landlord denied moving into the rental unit but acknowledged that the landlords did stay in the furnished unit at times during December 2015 so as to protect the property. The landlord submitted that the landlords maintained their alternative residence and that had replacement tenants been secured the landlords would have been able to provide possession to them in December 2015. The landlord acknowledged that the house was sold in January 2016 upon review of their financial circumstances and that it was their right to do.

The landlord disagreed with the tenant's position concerning the condition of the rental unit, stating that the appliances were replaced and there was no issue with mould, and pointed out that the landlords have no control over construction taking place in the neighbourhood.

Both parties provided consistent testimony that the tenants had informed the landlords that they would file an Application for Dispute Resolution if the landlords would not agree to end the tenancy. The tenant submitted that the tenants had a basis for seeking an end to the tenancy due to a breach of quiet enjoyment. The landlord was of the position that the tenants were unlikely to succeed with such an Application but that he was open to resolving the matter by way of the mutual agreement.

The tenants were of the position that it is unfair for them to pay for a month and the landlords were free to do as they pleased with the rental unit at their expense. The landlord maintained that it is the tenants who wanted to breach the fixed term tenancy agreement and their potential for liability was limited to one month's rent which is reasonable and not indicative of a nefarious scheme on part of the landlords.

### Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this case, the parties had entered into a fixed term tenancy agreement set to expire May 31, 2016. The Act provides for ways a tenancy ends under section 44 of the Act. The Act provides a few remedies for a tenant seeking to end a fixed term early. In this case, the parties chose to end their tenancy by way of a mutual agreement in response to the tenants' request to end the tenancy.

Upon review of the written Mutual Agreement, it is apparent that the tenants were able to gain the landlord's agreement to end the tenancy early by agreeing to pay the landlord rent for the month of December 2015. Since it was the tenants seeking to end the tenancy, I find it reasonable that they obtained the landlord's agreement by way of a negotiated settlement. In doing so the tenants avoided having to apply for dispute resolution, waiting for a hearing, and risking the possibility that they may not succeed. In reaching a negotiated settlement with the landlord, the tenants also benefited from limiting their liability to one month's rent as opposed to the potential to be liable for loss of rent for the remainder of the fixed term. Also, considering the tenants gave little notice to the landlord, one that would be insufficient to end a month-to-month tenancy, I find the landlord's requirement that the tenant's pay the equivalent of one month's rent in exchange for his agreement to release the tenants from the fixed term tenancy is not unreasonable or unconscionable. Therefore, I find the additional terms that are recorded on the Mutual Agreement are enforceable and I proceed to consider whether the landlords violated the terms of the Mutual Agreement.

The Mutual Agreement included a term that the tenants would be refunded all or part of the \$3,500.00 they paid if the landlords re-rented the unit for the month of December 2015. There are no other stipulations attached to this term that would require the landlord to take specific steps to search for replacement tenants. The term is clear without any other stipulations attached to it. Thus, I find that to be entitled to return of \$3,500.00 would require evidence that the rental unit was in fact re-rented for all or part of December 2015. I heard consistent testimony that the unit was not re-rented during all or part of December 2015. Therefore, I find the tenants not entitled to return of part of \$3,500.00 they paid under the terms of their Mutual Agreement.

During the hearing and in their written submissions, the tenants focused largely on the landlord's efforts to re-rent the rental unit for December 2015 and were of the position the landlords failed to mitigate losses. The landlord was of the position that the tenants have misplaced the obligation to mitigate losses. The Act provides for mitigation under section 7. It provides:

**Liability for not complying with this Act or a tenancy agreement**

- 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

[Reproduced as written with my emphasis underlined]

As pointed out by the landlord, it is not the landlords (the respondents) who have the burden to mitigate. The Act places the burden upon the applicant to mitigate losses and in this case the landlords are not the applicants. Therefore, I do not give further considering to whether the landlords made reasonable attempts to mitigate loss of rent.

In summary, I find the parties entered into a valid and enforceable agreement to end the tenancy and the landlords were not in breach of the agreement as it is written. Nor, were the landlords obligated to "mitigate" damages as submitted by the tenants since the landlords are not claiming any losses against the tenants. Therefore, I am of the view the tenants have not established an entitlement to compensation from the landlords due to a violation of the Act, regulations or tenancy agreement.

### Conclusion

The tenants' application is dismissed.

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: October 21, 2016

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Residential Tenancy Branch