



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENNINSULA PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes                      MND, MNDC, MNR, MNSD, FF

### Introduction

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

- a monetary order for unpaid rent, damages 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 tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenants acknowledged receipt of evidence submitted by the landlord. The tenants did not submit any documentation for this hearing.

### Issue to be Decided

Is the landlord entitled to a monetary award for loss and damages arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background, Evidence

The landlord's testimony is as follows. The tenancy began on June 1, 2016 and although was to be for a fixed term of one year, it ended early on November 30, 2016. The tenants were obligated to pay \$4500.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$2250.00 security deposit. The landlord testified that the tenants broke the lease early and that they incurred a loss of revenue for one month. The landlord seeks recovery of the loss of revenue, liquidated damages for ending the tenancy early as per their tenancy

agreement, costs to clean the carpet, move appliances from the garage back into the home, NSF and late fees and the recovery of the filing fee.

The landlord is applying for the following:

1.	Loss of Revenue December 2016	\$4500.00
2.	Washer and Dryer	78.75
3.	Carpet cleaning	472.50
4.	Liquidated damages	2250.00
5.	NSF and late fee	50.00
6.	Filing fee	\$100.00
	Total	<b>\$7451.25</b>

The tenants gave the following testimony. The tenants testified that they were told by the caretaker that they could leave when they wanted and it wouldn't be a problem. The tenants agree that the landlord is entitled to the liquidated damages claim but nothing else. The tenants testified that the washer and dryer didn't work which forced them to buy their own set. The tenants testified that the home was given back to the landlord in better condition than when they received it.

### Analysis

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

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/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. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I address the landlords' claims and my findings as follows.

*Washer and Dryer – \$78.75.* The landlord is seeking \$78.75 to hire two men to move the washer and dryer from the garage back into the unit. The landlord testified that the items were moved without their consent and that the landlord disputes that the items were nonfunctional. The landlord testified that if the items weren't working the tenants should have contacted them

to have them repaired or replaced. The tenants dispute this claim and stated that the items never worked which forced them to install their own washer and dryer. The move in condition inspection report doesn't mention any deficiencies of the appliances. Based on the above, I find that because of the tenant's actions the landlord incurred this cost and that the landlord is entitled to the recovery of this cost. The landlord is granted \$78.75.

*Carpet Cleaning \$472.50* . The landlord testified that the carpets required to be cleaned and that the tenants did not clean them at move out. The tenants dispute this claim. The tenants testified that they rented their own machine and cleaned the entire home and left in better condition than when they received it. In the landlords own documentation, the condition inspection report has carpets throughout the home listed in "good" condition with no notation that extra carpet cleaning is required. Based on the insufficient evidence before me I dismiss this portion of the landlords claim.

*NSF/Late Fee \$50.00-* The landlord testified that the December rent cheque came back from the bank as "NSF and that the tenants were late in payment of the rent. The landlord acknowledged that the tenants had already given notice and had vacated but advised that they were on a "preauthorized payment plan". I find this to be an administrative issue that the landlord is responsible for and not a cost that the tenants must bear, accordingly; I dismiss this portion of the landlords' application.

*Loss of Revenue - \$4500.00-* I find that the landlord and tenant entered into a fixed term tenancy for the period from June 1, 2016 to May 31, 2017.

Subsection 45(2) of the *Act* sets out how a tenant 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 tenant cannot give notice to end the tenancy before the end of the fixed term. If the tenant does, they could be liable for a loss of rent during the period when the unit cannot be re-rented. In this case, the tenant vacated the rental unit on November 30, 2016, before the completion of the fixed term on May 31, 2017. The tenants testified that they were given permission to vacate at any time of their choosing and were "free to break the lease"; however they were unable to provide sufficient evidence to support that. The landlord disputed that claim and stated that at no time were the tenants advised of that. As such, the

landlord is entitled to compensation for losses it incurred as a result of the tenant's failure to comply with the terms of his tenancy agreement and the *Act*.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the *Regulation* or the 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 a tenant's 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 soon after receiving written notice of the tenant's intention to vacate the rental unit. The landlord posted an online rental advertisement a few days later.

The landlord made efforts to re-post and renew the advertisements to preserve priority on the website. I accept the landlord's evidence that this was a slow rental period, particularly during the winter months. Although the landlord did not reduce the rental price or the fixed length term, the landlord explained the positive features of this unit to justify the price as well as the security of the fixed term lease. As such, I am satisfied that the landlord discharged its duty under section 7(2) of the *Act* to minimize its losses.

The landlord seeks one month of rental loss for December 2016, the period during which the property could not be re-rented due to the tenant's breach. The liquidated damages clause of the tenancy agreement addendum states that the landlord is not precluded from claiming a loss of rental income if liquidated damages are paid by the tenant. Accordingly, I find that the landlord is entitled to \$4500.00 for a loss of December 2016 rent from the tenant.

*Liquidated Damages - \$2250.00.* The tenants agree with the landlords liquidated damages claim, accordingly; I find that the landlord is entitled to \$2250.00.

The landlord is also entitled to the recovery of the \$100.00 filing fee.

### Conclusion

In summary, the landlord has been successful in the following claims:

Washer and Dryer	\$78.75
Loss of Revenue	\$ 4500.00
Liquidated Damages	\$2250.00
Filing Fee	\$100.00
Less deposit	\$ -2250.00
<b>Total:</b>	<b>\$4678.75</b>

The landlord has established a claim for \$6928.75. I order that the landlord retain the \$2250.00 deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$4678.75. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: June 20, 2017

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Residential Tenancy Branch