



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MACDONALD COMMERCIAL R.E.S. LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FF MNDC MNSD

### Introduction

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

- a Monetary Order pursuant to section 67 of the *Act*;
- an Order to retain the security or pet deposit pursuant to section 38 of the *Act*,  
and
- a return of the filing fee pursuant to section 72 of the *Act*.

Only the landlord attended the hearing. The landlord was represented at the hearing by Assistant to the Property Manager, M.C., (the "landlord"). The landlord was given a full opportunity to be heard, to present their sworn testimony and to make submissions.

The landlord explained that the Landlord's Application for Dispute Resolution (Landlord's Application) and evidentiary package were sent to the tenants individually by Canada Post Registered Mail on January 9, 2017. Tracking numbers for each package were provided at the hearing. Pursuant to sections 88, 89 & 90 of the *Act*, the tenants are deemed to have been served with these documents on January 14, 2017.

### Issue(s) to be Decided

Can the landlord retain the security deposit from the tenants?

Is the landlord entitled to a Monetary Order for loss suffered as a result of the tenants breaking their lease?

Is the landlord entitled to a return of the filing fee?

## Background and Evidence

Undisputed testimony provided by the landlord explained that this was a fixed-term tenancy that was set to run from June 1, 2016 to May 31, 2017. Rent was \$1,785.00 per month and a security deposit of \$892.50 continues to be held by the landlord.

The landlord explained that she was seeking a Monetary Order of \$2,185.00 in satisfaction for the tenants having broken their fixed term tenancy agreement. The landlord testified that the tenants gave notice on December 1, 2016 of their intention to vacate the rental unit at the end of December 2016. The tenants moved out of the rental unit on December 31, 2016. The parties performed a condition inspection on the final day of the tenancy. Following the conclusion of this inspection, the tenants provided the landlords with their forwarding address.

On April 15, 2017 the landlord was able to re-rent the apartment to a new tenant. The landlord said that the Monetary Order she sought was in reflection of \$1,785.00 in rent for January 2017, along with liquidated damages of \$300.00 as per section 14 of the tenancy agreement entered into between the parties. A copy of the residential tenancy agreement signed by the parties was provided to the hearing and the tenants, as part of the landlord's evidentiary package.

During the course of the hearing the landlord provided undisputed testimony that as soon as the tenants gave notice of their intention to vacate on December 1, 2016, the rental unit was placed on a website advertising the unit as being vacant and available for rent. On January 9, 2017 the landlord paid for an ad in a local newspaper in a further attempt to locate an occupant for the suite. Not finding any success in locating a renter, the landlord paid for a further ad to be placed on a local real estate website on February 23, 2017.

## Analysis

Section 7 of the *Act* explains, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord 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."

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, "Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the

landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.” In this case, written notice was provided to the landlord on December 1, 2016. The landlord testified that upon receipt of this notice she immediately posted an online ad listing the apartment for rent for January 1, 2017. As she was unable to find renters through this ad, the landlord paid for two further ads to be placed both online and in a print newspaper. I find that the landlord has made *reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.*

The landlord has also applied for liquidated damages in the amount of \$300.00. During the course of the hearing, the landlord provided undisputed testimony that section 14 of the residential tenancy agreement signed between the parties contained a clause which penalized a tenant \$300.00 for liquidated damages. The landlord stated that due to the unexpected nature of the move, efforts were required to ensure the unit was re-rented as quickly as possible. A copy of the tenancy agreement provided to the hearing confirmed the tenants’ written agreement to this clause. I find that the tenants have violated their tenancy agreement and the landlord had to take steps to mitigate future loss. These steps involved making efforts that were unexpected and required unanticipated work from the landlord’s staff, in addition to expenses related to the placement of ads.

Section 67 of the *Act* states, if damage or loss results from a party not complying with this Act, the regulations or a *tenancy agreement*, the director may determine the amount of, and order that party to pay, compensation to the other party. I find that a violation of the tenancy agreement occurred by the tenants, that the landlord had to make efforts to rectify this violation and that landlord is entitled to compensation as per section 14 of the tenancy agreement signed by the parties.

The landlord has also applied to retain the security deposit from the tenants. Section 38 of the *Act* requires the landlord to either return a tenant’s security deposit in full or file a claim against a tenant’s deposit within 15 days of the *later* of the end of the tenancy or the date a tenant’s forwarding address is received in writing. The landlord has demonstrated that she received the tenants’ forwarding address on December 31, 2016 and applied for dispute resolution on January 9, 2017. The landlord has therefore fulfilled the requirements of section 38 of the *Act*. Subsections 4 of this section states that, “A landlord may retain an amount from a security deposit or a pet damage deposit if, after the end of the tenancy, the director orders that the landlord may retain the amount.” I find that the landlord has suffered a loss as a result of this tenancy and may

therefore retain the security deposit pursuant to section 38 and 72 of the *Act* against the monetary award to which she is entitled.

As the landlord was successful in her application, she may recover the \$100.00 filing fee associated with this application.

### Conclusion

I issue a Monetary Order of \$1,292.50 in favour of the landlord as follows:

Item	Amount
Unpaid Rent for January 2017	\$1,785.00
Liquidated Damages	300.00
Recovery of Filing Fee	100.00
Less Return of Security Deposit	(-892.50)
<b>Total =</b>	<b>\$1,292.50</b>

The landlord is provided with a Monetary Order in the above terms and 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.

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: July 4, 2017

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Residential Tenancy Branch