



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

In the first application the landlords seek to recover damages for the cost and effort expended in securing a new tenant after this tenant left her fixed term tenancy early.

In the second application the tenant seeks to recover her security deposit, pet damage deposit and key fob deposit.

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Were the efforts and expenditures of the landlords reasonable in the circumstances and the result of the tenant's repudiation of the tenancy agreement? Was the tenant prevented from subletting the rental unit?

### Background and Evidence

The rental unit is a one bedroom condominium apartment. The tenancy started in May 2016. The parties signed a written tenancy agreement for a two year term ending April 30, 2018 at a monthly rent of \$1200.00. The tenant paid a \$600.00 security deposit, a \$150.00 pet damage deposit and a \$100.00 key fob deposit: at total of \$850.00.

The agreement provided that the tenant must vacate the premises after the two year term.

Under the terms of the tenancy agreement the rent increased to \$1220.00 on May 1, 2017, for the remainder of the term.

In March 2017 the tenant informed the landlords that her circumstances had changed and that she would be moving out at the end of May 2017. She inquired about the possibility of subletting the rental unit but did not receive a direct reply from the landlords.

On April 4, the landlords listed the rental unit on at least two internet rental sites. By April 5 they had 52 email responses. On April 5 they received 24 emails and on April 7 they received 26 emails regarding the rental unit. They continued to correspond to numerous emails for days after that. They showed the rental unit and met with applicants on April 13.

By April 18 the landlords had secured a new tenant to start June 1, 2017 for a one year fixed term at monthly rent of \$1250.00.

They have provided a breakdown of the time spent securing a new tenant. It totals 54.25 hours. They consider their time to be of a value of \$25.00 hour. They seek \$1356.25 for their time and \$93.40 for their out of pocket expenses incurred as a result of the tenant breaking her lease.

The tenant says she could have sublet the rental unit but the landlords failed to respond to her March inquiry about that possibility.

### Analysis

Regarding the question of subletting, I find that the landlords did not prevent the tenant from attempting to sublet and she did not require any special permission from them to pursue the finding of a subtenant and the seeking of the landlords' consent to sublet to that tenant.

Section 34 of the *Residential Tenancy Act* (the "Act") provides that any tenant with a remaining term of six months or more may assign or sublet her tenancy with the landlord's consent and that the landlord's consent may not be unreasonably withheld.

It was up to the tenant to determine her rights, find a subtenant, seek the landlord's consent and if that consent was unreasonably withheld, to make application to authorize the subletting. She did not do so and cannot now hold the landlords' non-response as a defence.

Regarding the landlords' claim for compensation, I consider their efforts to locate and secure a new tenant to be well beyond what might have been reasonably expected in the circumstances.

It was stated that it is a landlord's market in the area of the rental unit. That is amply corroborated by the great number of inquiries the landlords received immediately upon posting the rental unit as available.

It is reasonable to assume that many of the applicants were reasonable candidates for the tenancy. The fact that the landlords decided to spend an inordinate amount of time finding the person who, in their view would be the absolute best tenant is not an effort the tenant could reasonably have foreseen nor one a reasonable person would expect to have to pay for.

I find that the windfall in rent the landlord's gained by the new rent of \$1250.00, a gain of \$360.00 over the remainder of the tenant's term, amply compensates them for the re-renting efforts that might reasonably have been expected of them in the circumstances of this case.

#### Conclusion

The landlord's application is dismissed.

The tenant is entitled to recover the \$850.00 in deposit money the landlords' still hold. I also award her recovery of the \$100.00 filing fee. She will have a monetary order against the landlords in the amount of \$950.00.

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: September 19, 2017

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Residential Tenancy Branch