



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BELMONT PROPERTIES  
and [tenant name suppressed to protect privacy]

Code MNR, MND, MNSD, FF

## Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for loss of rent and for money owed, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

## Issues to be Decided

Is the landlord entitled to a monetary order for loss of rent?

Is the landlord entitled to monetary compensation for money owed?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

## Background and Evidence

The party entered into a fixed term tenancy, which was to begin on July 1, 2017, and was to expire on June 30, 2018. Rent in the amount of \$2,700.00 was payable on the first of each month. The tenants paid a security deposit of \$1,350.00.

The landlord claims as follows:

a.	July 2017, rent	\$2,700.00
b.	Loss of rent from August 1 to 15 <sup>th</sup>	\$1,350.00
c.	Liquidated damages	\$1,000.00
d.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$5,150.00</b>

The landlord's agent testified that they entered in to a fixed term tenancy agreement with the tenants that was to commence on July 1, 2017; however, the tenants decided that they would not be moving in to the premises. The agent stated that the tenants had unreasonable expectation, likely because they were familiar with this unit when it was new.

The landlord's agent testified that when they entered into the agreement, the landlord agreed to make some improvements. The agent stated that those improvements were made at a considerable cost to the landlord. The agent stated that rental unit was also professionally cleaned. Filed in evidence are invoice for repairs and cleaning.

The landlord's agent testified that due to the tenants breached they were unable to find a new renter until August 15, 2017, and seek to recover loss of rent for July 2017 and half of August 2017, in the total amount of \$4,050.00.

The landlord's agent testified that the landlord seeks to recover liquidated damages as specified in the tenancy agreement in the amount of \$1,350.00.

The tenant testified that they did not move into the property and feel they are not responsible for the rent. The tenant stated that the rental unit was not cleaned properly. The tenants stated that the fireplaces were the only source of heating and not working.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 16 of the Act provides that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

In this case the tenants did not move into the rental unit as they alleged that the rental unit was not cleaned properly or that there was no source of heat. I do not accept the evidence of the tenants that landlords failed to meet their obligation under the Act, or for completing the agreed upon items when entering into the tenancy. The landlord has provided receipt of work completed, which included adding baseboard heaters and cleaning the rental unit.

The tenant provided no supporting evidence, such as photographs or that the electrical baseboard heating was not adequate. I find it more likely than not that the tenants had an unreasonable expectation of the rental unit.

Section 45 of the Residential Tenancy Act states: (fixed term)

*45 (2) 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,*

I find the tenants' breached section 45 of the Act, when they ended the tenancy earlier than the Act allowed and this caused losses to the landlord for July 2017, rent, and a portion of August 2017, rent.

The landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenants had not breached the tenancy agreement or Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenants could have legally ended the tenancy. Therefore, I find the landlord is entitled to loss of rent for July 2017, and the portion of August 2017, in the total amount of **\$4,050.00**.

Further, as I have found that the tenants breached the tenancy agreement and the Act, I find the landlord is entitled to recover the liquidated damages as stated in the tenancy agreement in the amount of **\$1,000.00**.

I find that the landlord has established a total monetary claim of **\$5,150.00** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit and interest of **\$1,350.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$3,800.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

### Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: January 11, 2018

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Residential Tenancy Branch