



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC-LS

### Introduction

This hearing, conducted by a conference call, dealt with the landlord's applications under the *Residential Tenancy Act* (the *Act*) seeking a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to give affirmed testimony, present evidence, make submissions and call witnesses.

As both parties were present service was confirmed. The tenant testified that they received the landlord's application for dispute resolution and evidence. The tenant said they had not served any evidence on the landlord. Based on the undisputed testimony I find that the tenant was served with the landlord's application and evidence in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

### Background and Evidence

The parties agree on the following facts. On August 28, 2017 the parties signed a tenancy agreement for a fixed term tenancy agreement commencing October, 2017. The monthly rent was \$2,200.00 payable on the first of each month. A security deposit of \$1,100.00 and a pet damage deposit of \$1,100.00 were paid by the tenants when signing the tenancy agreement and are still held by the landlord.

On September 19, 2017 the tenant gave written notice to the landlord that they were unable to move in to the rental unit and ended the tenancy. The landlord testified that upon receiving the tenant's notice they began seeking a new tenant. The landlord said that they were able to find a new tenant to occupy the rental unit at the same monthly rent beginning November 1, 2017.

The landlord seeks a monetary award in the amount of \$2,200.00 the equivalent of the unpaid rent for October, 2017.

### Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

Residential Tenancy Policy Guideline 5 states that while it is not necessary that the party making a claim do everything possible to minimize the loss, some reasonable efforts must be taken. The Guideline further provides that, "Where the tenant has vacated or abandoned the rental unit or site, the landlord must try to rent the rental unit or site again as soon as is practicable."

I find that there was a valid tenancy agreement entered into by the parties on August 28, 2017. Under this tenancy agreement the tenant was obligated to pay \$2,200.00 rent by October 1, 2017. I find that the tenant gave notice to the landlord of their intention to end the tenancy in writing on September 19, 2017. As the tenant gave notice of their intention to end the tenancy on September 19, 2017 the effective date of the end of tenancy was October 31, 2017. Pursuant to the tenancy agreement the tenant was still obligated to pay the full monthly rent of \$2,200.00 by October 1, 2017.

I accept the landlord's evidence that the tenant's breach of the fixed term tenancy agreement caused some loss. However, I find that there is insufficient evidence that the landlord took reasonable steps in order to mitigate their rental income loss. While the landlord testified that they posted the rental unit online they did not submit into written

evidence copies of the posting or details on how the suite was marketed. The landlord testified that they were only able to find a new occupant to take possession starting November 1, 2017. I do not find it reasonable that the landlord was unable to find a new occupant for over a month after the tenant provided written notice. The landlord has not provided sufficient evidence to show that the steps taken to find a new occupant were reasonable under the circumstances. Under these circumstances, as there is insufficient evidence to show that the landlord has taken reasonable steps to mitigate their loss of rental income I find that a monetary award of \$1,100.00, the equivalent of half the monthly rent, is appropriate.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants' \$1,100.00 security deposit in satisfaction of the monetary award issued in the landlord's favour. No interest is payable over this period. The landlord is ordered to return the tenant's pet damage deposit of \$1,100.00.

### Conclusion

The landlord may retain the tenant's security deposit of \$1,100.00 in satisfaction of the monetary award. The landlord is ordered to return the balance of the tenant's deposit to the tenant.

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: April 26, 2018

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Residential Tenancy Branch