



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      MNDC FF

### Introduction

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

- a Monetary Order pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Only the landlord's agent, D.S. attended the hearing. The landlord's agent was given a full opportunity to be heard, to present sworn testimony and to make submissions.

The landlord's agent explained that individual applications for dispute along with evidentiary packages were sent to the tenants by way of Canada Post Registered Mail on December 7, 2017. The landlord provided copies of both Canada Post tracking numbers to the hearing, and said her records indicated these individual packages were picked up on December 13, 2017. Pursuant to sections 88, 89 & 90 of the *Act*, the tenants are deemed to have been served with the landlord's application for dispute and evidentiary packages, on December 13, 2017, five days after their mailing.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award? Can the landlord recover the filing fee?

### Background and Evidence

Undisputed testimony was provided by the landlord that this tenancy began on December 15, 2016. This was a fixed term tenancy that was set to expire on December 31, 2017. Rent was \$1,600.00 per month while security and pet deposits of \$800.00 each paid at the outset of the tenancy continue to be held by the landlord. The landlord

said she was seeking a monetary award of \$1, 600.00, along with a return of the filing fee because of loss she had experienced under the tenancy.

The landlord explained that the tenants moved out of the rental unit on November 30, 2017 after providing notice of their intention to vacate the suite on approximately November 1, 2017. The landlord said that new tenants were not found until February 9, 2018. The landlord described the efforts she took to re-rent the suite; these included, posting advertisements in a local buy and sell, publishing advertisements on the company's website and posting notices on Facebook. The landlord said these advertisements were posted in "early" November 2017 and were renewed regularly.

### 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."

After considering the undisputed testimony of the landlord, and reviewing the landlord's evidentiary package, I find the landlord made *reasonable* efforts to re-rent the unit as quickly as possible. The landlord explained that a new tenant was in place for February 9, 2018 and the unit remained unoccupied for December 2017 and January 2018. I will therefore award the landlord a monetary award of \$1,600.00 for the unpaid rent of December 2017.

As the landlord was successful in her application she may recover the \$100.00 filing fee from the tenants.

Using the offsetting provisions contained in section 72 of the *Act*, the landlord may withhold both the pet and security deposits in satisfaction for a return of the monetary award. The landlord will be provided with a monetary award of \$100.00 in satisfaction for a return of the filing fee.

Conclusion

I issue a Monetary Order of \$100.00 in favour of the landlord. This amount represents a return of the \$100.00 filing fee.

The landlord is ordered to withhold both the pet and security deposit in satisfaction for the unpaid December 2017 rent of \$1,600.00.

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: July 24, 2018

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Residential Tenancy Branch