



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL-S FFL

### Introduction

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

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the security deposit for this tenancy pursuant to section 38 and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

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

As both parties were in attendance service was confirmed. The tenant confirmed receipt of the landlord's application for dispute resolution and evidence. The landlord confirmed receipt of the tenant's evidence. Based on the undisputed testimony I find that the parties were each served with the respective materials 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?

Is the landlord entitled to retain the security deposit for this tenancy?

Is the landlord entitled to recover the filing fee for the application?

### Background and Evidence

The parties agreed on the following facts. This fixed term tenancy began in July, 2017. The monthly rent was \$2,550.00 payable on the first of each month. A security deposit of \$1,275.00 was paid at the start of the tenancy and is still held by the landlord.

The tenant notified the landlord of their intention to move out earlier than the fixed term on November 27, 2017 by issuing a draft Mutual Agreement to End Tenancy which provided an end of tenancy date of January 24, 2018. The tenant paid the full monthly rent through February, 2018 though they testified that they had vacated the rental unit by the end of January, 2018.

The parties participated in a move-out inspection and prepared a condition inspection report dated March 2, 2018. The tenant provided a forwarding address on the condition inspection report and no deduction from the security deposit for this tenancy was sought or authorized.

The landlord testified that they were able to find a new tenant for the rental unit beginning March, 2018. The landlord submitted the tenancy agreement into documentary evidence and submits that there is a clause in the addendum that provides that upon early end of the tenancy by the tenant the full amount of the rent for the period of the tenancy agreement becomes due and owing.

The landlord testified that they incurred expenses seeking and finding a new tenant.

The landlord seeks a monetary award of \$12,988.00 for the following items:

Item	Amount
Unpaid Rent March-July, 2018 (5 x \$2,550)	\$12,750.00
Advertising Cost	\$21.00
Labour Hours (20 hr x \$11.35)	\$227.00
<b>TOTAL</b>	<b>\$12,998.00</b>

### 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 November 27, 2017. The landlord testified that upon receipt of this notice they took reasonable action by posting an online ad listing the unit online. I find that the landlord has made reasonable efforts to find a new tenant to move in to the rental unit.

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.

The landlord testified that they were able to get a new tenant beginning March, 2018. The parties gave evidence that the tenant paid the full rent through February, 2018. I find that there is no basis for the landlord’s claim of a monetary award for the months of March through July, 2018. The landlord was able to find a new tenant to occupy the suite and collects rent. I find that there is no loss which would give rise to a claim for unpaid rent for that period.

I find the clause in the tenancy agreement that provides that all of the rent payable for the remainder of the period of the tenancy agreement should the tenant give notice prior to the tenancy term to be a clear violation of section 22 of the *Act* which prohibits acceleration terms. Therefore, I find this term to be unenforceable.

I dismiss this portion of the landlord’s claim seeking a monetary award for unpaid rent.

I accept that the landlord incurred some costs for advertising the suite and renting out the unit. I accept the landlord’s evidence that the cost of labour hours and advertising online was \$248.00. Accordingly, I grant the landlord a monetary award in that amount.

As the landlord’s application was only partially successful I decline to issue an order allowing the landlord to recover their filing fee from the tenant.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

In this case the tenant provided a forwarding address in writing on the Condition Inspection report dated March 2, 2018 and the landlord filed their application for dispute resolution on March 6, 2018, within the 15 days provided under the *Act*. As such, I find that the landlord is not required to pay a monetary award of double the deposit.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$248.00 of the \$1,275.00 security deposit currently held by the landlord. The landlord is ordered to return the remaining \$1,027.00 to the tenant.

### Conclusion

The landlord is authorized to deduct \$248.00 from the security deposit for this tenancy.

The landlord is ordered to return the balance of the deposit and I issue a monetary award in the tenant's favour in the amount of \$1,027.00.

The landlord must be served with this Order as soon as possible. Should the landlord 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: October 4, 2018

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Residential Tenancy Branch