



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SKYLINE LIVING  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            MNDCL-S, FFL

### Introduction

In this dispute, the tenants breached their fixed-term tenancy agreement by ending the tenancy early, and the landlord seeks compensation under section 67 of the *Residential Tenancy Act* (the “Act”) for their loss.

The landlord applied for dispute resolution on January 4, 2019 and a dispute resolution hearing was held on April 29, 2019. The landlord’s agent the tenants attended the hearing were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. Neither party raised any issues with the service of documentary evidence.

I have reviewed evidence submitted that met the requirements of the *Rules of Procedure*, and to which I was referred, but only evidence relevant to the issues of this application are considered in my decision.

### Issues

1. Is the landlord entitled to compensation for the tenants’ breach of the tenancy agreement?
2. Is the landlord entitled to compensation for the filing fee, pursuant to section 72 of the Act?

### Background and Evidence

The landlord’s agent (hereafter the “landlord” for brevity) testified and confirmed that the tenancy began on August 20, 2018 and that it was a fixed-term tenancy that was to end on August 31, 2019. However, the tenants gave notice on October 25, 2018 and again in November that they were ending the tenancy on December 21, 2018, and then again on December 31, 2018.

Monthly rent was \$1,690.00 and \$75.00 for parking, for a total of \$1,765.00. The tenants paid a security deposit of \$845.00. There was no pet damage deposit. A copy of the written tenancy agreement was submitted into evidence.

The landlord submitted that because of the tenants ending the tenancy much earlier than it was to end, that the landlord has suffered lost rent for January to March 2019, inclusive, and lost rent

for April 1 to 14, 2019, for a total of \$6,207.39. In addition, the landlord seeks \$100.00 in compensation for the cost of the filing fee.

In terms of efforts made to rent the rental unit, the landlord testified that the company is constantly listing its available apartments online, and that the six people of the company at the complex are constantly accepting applications and screening potential renters. After an unsuccessful period of no prospective tenants, the landlord received an applicant who became a new tenant of the rental unit on April 15, 2019. The rental unit was advertised at, and rented for, monthly rent at \$1,690.00.

The landlord testified that they do not keep records on what rental units they show to prospective renters. They just show the units as interested people come. The building complex is 240 rental unit, with both one and two-bedroom rental units.

The landlord explained that the vacancy rate in this region is 1.9%, but that it is harder to rent in winter months. Snowbirds, who often rent their houses for short-term periods whilst they flee south for the winter, create competition in the rental market during this period.

Written submissions were provided by the tenants, who emphasized throughout their testimony that they selected the rental unit because it was a nice, new building with cameras, security, privacy, and a secure environment.

Not long after they moved into the rental unit that sense of security was shattered by the presence of two maintenance workers in their rental unit. (The maintenance people did not apparently think that it was a big deal being in the rental unit without giving proper notice.)

In other words, and as submitted by the tenants, the landlord breached a material term—security—of the tenancy which led to the tenants having no choice but to end the tenancy.

After a rather lengthy, tiresome, and unsuccessful attempt by the tenants to obtain some sort of assurance from the landlord that this wouldn't happen again, the tenants gave notice that they would be ending the tenancy.

The tenant (B.W.) testified that there appeared to be a waiting list at the time they gave notice to end the tenancy, and that there were no two-bedrooms listed as being available. He further argued that had the landlord given them permission to try to find a replacement tenant that a new tenant would have surely been found. The landlord provided no such permission, but they also provided no response to the tenants' many queries.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an

arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria to be awarded compensation:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

In this case, the landlord argued that the tenants breached the Act by ending the tenancy early.

Section 45, which I will reproduce in its entirety for the benefit of the parties, deals with how a tenant may give notice to end a tenancy:

45(1) A tenant may end a periodic 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, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(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, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

The tenants argued that the landlord's failure to comply with the tenants' concerns about the security and safety of the rental unit was a breach of a material term of the tenancy agreement. If the landlord had failed to comply with a material term, then the tenants would have a legal right under section 45(3) of the Act to end the tenancy as they had.

I note that clause 13 of the tenancy agreement states that "The Landlord may enter the Rented Premises at any time without written notice in cases of emergency, or with the consent of the Tenant."

The landlord did not dispute that the maintenance workers should not have been in the rental unit, and there is no evidence that the workers provided any sort of notice of entry nor any evidence that they were there for the purposes of an emergency.

I conclude that the landlord breached a material term of the tenancy agreement. However, there is no evidence that any further unauthorized entry occurred and as such there was no correction to be undertaken by the landlord. While the landlord's failure to respond to the tenants' many attempts to obtain an assurance is unfortunate, the unauthorized entry appeared to be a one-time event. As such, the tenants cannot use section 45(3) as a legal defense to the way they ended the tenancy.

Given the above and based on the evidence that the tenants gave notice to end the tenancy in breach of section 45(2) of the Act, I find that the tenants breached the Act and the tenancy agreement.

Having found that the tenants breached the Act and the tenancy agreement, I must determine whether the landlord suffered loss resulting from that breach? I find that the landlord has suffered a loss of rent from the tenants' breach.

Third, has the landlord proven the value of that loss? I find that the landlord has lost rent in the amount claimed of \$6,107.39.

Finally, I must determine whether the landlord has proven, on a balance of probabilities, that they have done whatever is reasonable to minimize the loss. In this case, I find that they have not.

The landlord's agent testified that the landlord "constantly lists" rentals online, such as on Kijiji and its own microsite. However, the landlord's agent was unable to provide any information as to when, specifically, the rental unit was listed. Nor did the landlord provide any documentary evidence that might prove when and how many people inquired about the rental unit, how many came and looked at the rental unit, and how many applications they received between the tenants' first notice of October 25, 2018 to the present day. In other words, I have no documentary evidence that establishes what effort was made by the landlord to re-rent the unit and thereby minimize its loss.

The tenants testified that there appeared to be a waiting list at the time they gave their notice in October 2018, and that they do not recall a two-bedroom rental unit ever being listed as available.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the landlord has failed to provide any evidence (over and above the agent's testimony) that the landlord did whatever was reasonable to minimize the loss.

That having been said, the tenants breached the Act, and as such I award the landlord nominal damages in the amount of \$100.00. I further award the landlord compensation of \$100.00 for the filing fee. As such, the landlord may retain \$200.00 of the tenants' security deposit in full satisfaction of this award.

A balance of \$645.00 of the security deposit must be returned to the tenants within 15 days of the date that the landlord receives this decision.

Conclusion

I grant the landlord a monetary award of \$200.00, which they may retain from the security deposit.

I order the landlord to return the balance of the security deposit in the amount of \$645.00 to the tenants within 15 days of the receipt of this decision. Issued along with this decision is a monetary order in the amount of \$645.00 should the tenants be required to enforce this award.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: April 29, 2019

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Residential Tenancy Branch