



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC MNSD FF

### Introduction

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

- a monetary order for compensation for damage or loss pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the application and respective evidence submissions of the parties.

### Issues

Is the landlord entitled to a monetary award for compensation for damage or loss?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background & Evidence

This tenancy was for a six month fixed term beginning on November 1, 2018 and set to end on April 30, 2019. The monthly rent was \$1875.00 payable on the 1<sup>st</sup> of each month. On November 29, 2018 the tenants provided written notice to end the tenancy with an effective date of December 31, 2018 and vacated on this date. The tenants paid a security deposit of \$900.00 and a pet deposit of \$900.00 at the start of the tenancy. The landlord returned the tenants pet deposit but still retains the security deposit.

The landlord is claiming an amount of \$362.71 in fees incurred to re-rent the unit. The landlord was able to re-rent the unit as soon as January 1, 2019 so is not claiming any rental loss.

The landlord is also claiming \$13.94 in unpaid utilities which was not disputed by the tenants.

The tenants argue that the landlord did not suffer any loss as he gained a total of \$400.00 by re-renting the unit by an extra \$100.00 per month over the remaining 4 months of the fixed term contract.

The landlord confirmed that the unit was re-rented at an additional of \$100.00 per month as this was his regular rate and the tenants had just got a deal by booking in advance.

### Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

I find the tenants breached the fixed term tenancy agreement by terminating it before the 6 month end date and the landlord incurred fees to re-rent the unit.

However, Residential Tenancy Policy Guideline #3 Claims for Rent and Damages for Loss or Rent provides the following guidance on page #2, paragraph 4:

In a fixed term tenancy, if a landlord is successful in re-renting the premises for a higher rent and as a result receives more rent over the remaining term than would otherwise have been received, the increased amount of rent is set off against any other amounts owing to the landlord for unpaid rent or damages, but any remainder is not recoverable by the tenant. In a month to month tenancy the fact that the landlord may have been able to re-let the premises at a higher rent for a subsequent tenancy does not serve to reduce the liability of the previous tenant.

As the landlord gained \$400.00 in rental income over the remaining 4 month term of the fixed term tenancy this amount is set off against the landlord's loss of \$362.71 resulting

in no net loss for the landlord. This portion of the landlord's claim is therefore dismissed without leave to reapply.

The landlord is awarded \$13.94 for unpaid utilities as agreed to by the tenants.

As the landlord was for the most part not successful in this application, I find that the landlord is not entitled to recover the filing fee paid for this application from the tenants.

The landlord continues to hold a security deposit in the amount of \$900.00. The landlord is permitted to retain \$13.94 from this security deposit in full satisfaction of the monetary award and the balance of \$886.06 is to be returned to the tenants forthwith.

The tenants are granted a Monetary Order in the amount of \$886.06.

### Conclusion

Pursuant to section 67 of the *Act*, I grant the tenants a Monetary Order in the amount of \$886.06. 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: May 14, 2019

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Residential Tenancy Branch