



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary claim of \$1,300.00. This was for money owed or compensation for damage or loss under the Act, regulation and/or tenancy agreement, based on losing rental income from the Tenants breaking a fixed term lease. The Landlord also applied to recover the cost of the \$100.00 Application filing fee.

The Tenants, D.W. and G.K, and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. All Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision. At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

### Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both Parties and any orders

sent to the appropriate Party.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the \$100.00 filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on August 1, 2018 running to August 1, 2019, with a monthly rent of \$1,300.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$650.00, and a pet damage deposit of \$650.00. The Parties agreed that the tenancy ended when the Tenants gave the Landlord a notice of their intention to end the tenancy on December 31, 2018, in person, with an effective vacancy date of January 31, 2019. The Tenants said they moved out on January 24, 2019, and gave the Landlord their forwarding address on the move-out condition inspection report dated January 24, 2019. The Landlord applied for dispute resolution claiming against the security and pet damage deposits on February 5, 2019.

In the hearing, the Landlord said:

They gave their notice properly. No problem. I have a problem with them breaking the lease. They said they'd rent until August [2019] and they didn't. I couldn't rent it out; no point in leaving it empty. Tried to rent it out . . . rented it out in February for March, so I lost February's rent. I kept their deposits in lieu of your decision. They cleaned fine, no problem with damage. I just couldn't find anyone to rent it on time.

In the hearing, the Tenant said:

I don't think it's legal to hold onto someone's deposits. We tried our best to accommodate him - to show the place. They would always fall through, though. Then we started getting a bunch of notices, 4 or 5 at a time the day before, so they weren't even valid, but we went with it. On January 19 we'd get a notice to enter on January 21 – 31 between 8 a.m. to 5 p.m. Or he gave it to us at 11 o'clock on January 20. Eventually – it became clear that he wasn't comfortable with our things here. We left a whole week earlier to take care of everything – we

went far and above. He didn't list it in many places. We checked on [advertising website] and it wasn't up. It was very inconvenient. We were not able to enjoy the place at all that last month. We had no recourse.

The Landlord said in the hearing:

We had a mutual verbal agreement to correspond by text. I gave them my word that I wouldn't show the unit without a representative there. I said I might have to let a contractor in to inspect for mould, but I can't schedule the bonded contractor's time. I might have to let him in because I have to get this done. The contractor was there twice to look at it. He noticed surface mould around the shower, for not leaving fan on long enough. The next time he crawled in the attic and went on the roof to look for leaks.

I gave them the list of written dates – I didn't know that it was illegal to give notice the way I did. I started on [advertising website], never had any luck with [different advertising website]. I put the ad in on January 1. I collected all the people who responded. It's all in my timeline. 'Finally got some people to look at it. Not a lot of response. I wanted to get my \$1300 again. I rented it for less in February. I followed every lead I had right to the end.

### Analysis

The party who applies for compensation against another party has the burden of proving their claim. Policy Guideline 16 sets out a four part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

1. That the Tenant violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

I find that in this case, the Tenant broke a 12-month lease by ending the tenancy before the end of the lease. The Landlord satisfied me that he suffered a loss of a month's rent in February 2019, because he could only find another tenant starting on March 1, 2019. The value of the loss is the \$1,300.00 in the rent that the Tenants would have paid, if they had not ended the tenancy early.

Given the Parties' evidence of the Landlord showing the suite and trying different avenues of finding a new tenant, I am satisfied that the Landlord mitigated his loss.

Based on the evidence before me overall, I find the Landlord is entitled to a monetary award of \$1,300.00 for lost rent income in February 2019. I also award the Landlord with recovery of the \$100.00 Application filing fee. I direct the Landlord to retain the Tenants' \$650.00 security and \$650.00 pet damage deposits in partial satisfaction of the monetary awards. I grant the Landlord a monetary order for recovery of the \$100.00 filing fee.

### Conclusion

The Landlord's claim for compensation for the loss of a month's rental income is successful in the amount of \$1,300.00. The Landlord is also awarded recovery of the \$100.00 filing fee for this Application from the Tenants. The Landlord is authorized to retain the \$650.00 security and \$650.00 pet damage deposits to set off against the amount awarded.

I grant the Landlord a monetary order under section 67 of the Act from the Tenant in the amount of **\$100.00**.

This order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Dated: June 19, 2019

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Residential Tenancy Branch