



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR 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 unpaid rent pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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 the filing fee for this application 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 service of the application and respective evidence submission.

### Issues

Is the landlord entitled to a monetary compensation for unpaid rent and loss under the Act?

Is the landlord entitled to retain the tenant's security deposit?

Is the landlord entitled to recover the filing fee?

### Background & Evidence

The tenancy began on September 1, 2018 and was supposed to be for a fixed term of one year expiring on August 31, 2019. The monthly rent was \$1899.00. The tenants paid a security deposit of \$949.50 at the start of the tenancy which the landlord continues to retain.

On March 19, 2019, the tenants provided notice to the landlord to end the tenancy early with an effective date of May 31, 2019. The tenants vacated the rental unit on May 31, 2019.

The landlord is claiming \$805.33. in liquidated damages as the tenant ended the fixed term tenancy early. The landlord submits clause #5 of the tenancy agreement initialed and signed by the tenants provides for liquidated damages to cover the administrative costs associated with re-renting the unit.

The landlord is also claiming loss of rent for the months of June and July 2019. The landlord testified that the suite was advertised for rent but was not re-rented until August 1, 2019. The landlord submitted a copy of the advertisement placed to re-rent the unit. The landlord testified that as they have multiple units the advertisements are continuously running. The landlord testified the tenants' unit was likely first advertised on May 20, 2019. The landlord later changed his testimony and submitted that the previous property manager just submitted the advertisement that was available at the time as evidence. The landlord submits the advertisement would have been posted before May 20, 2019, likely at the end of April 2019.

The landlord is claiming \$90.00 in cleaning fees. This claim was not disputed by the tenants.

The tenants argue the previous property manager advised them one-month notice would be sufficient to end the tenancy. The tenants submit that they provided more than two-months notice. The tenants testified that they got 24 hr showing notices from the landlord repeatedly, but nobody ever came to view the suite. The tenants testified that they first received notices over the Good Friday long weekend in April, but no one came during this time. The tenants testified that showings did not occur until the last week they were there. There were three showings during this period.

### 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.

As per section 45 of the Act, a tenant may not end a fixed term tenancy earlier than the date specified in the tenancy agreement as the end of the fixed term unless the landlord has breached a material term of the tenancy agreement.

The tenancy agreement signed by the parties stipulates the landlord may require the tenants to pay a sum of \$805.33 as liquidated damages if the tenant terminates the tenancy before the end of the fixed term.

I find the tenants broke the fixed term tenancy agreement before the end of the term. I find the amount of \$805.33 as being a reasonable pre-estimate of the loss in order to compensate the landlord for any administrative costs incurred in re-renting the unit. I find this amount is not extravagant and does not constitute a penalty. I accept the landlord's claim of **\$805.33** in liquidated damages.

With respect to the landlord's claim for loss of rent for June and July 2019, I find the landlord submitted insufficient evidence that it attempted to mitigate losses by re-renting the rental unit as soon as possible. The landlord only submitted a copy of one ad which was allegedly posted beginning at the end of April 2019. The landlord was unclear in his testimony on when the advertisement was first posted. The landlord submitted no evidence in support of when it was posted, or any evidence of responses/showings conducted. The tenants gave notice on March 19, 2019; therefore, the landlord could have started advertising soon thereafter. This part of the landlord's claim is dismissed.

The landlord is awarded **\$90.00** for cleaning fees as agreed to by the tenants.

As the landlord was only partly successful in this application, I find that the landlord is not entitled to recover the filing fee paid for this application.

**Total entitlement for Landlord: \$895.33** (\$805.33 + \$90.00)

The landlord continues to hold a security deposit in the amount of \$949.50. The landlord is permitted to retain \$895.33 from this security deposit in full satisfaction of the monetary award and the balance of \$54.17 is to be returned to the tenants forthwith.

**The tenants are granted a Monetary Order in the amount of \$54.17.**

### Conclusion

Pursuant to section 67 of the *Act*, I grant the tenants a Monetary Order in the amount of \$54.17. 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 24, 2019

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Residential Tenancy Branch