



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **FFL MNDCL MNDL MNRL**

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid rent, for money owed or loss, for damages to the unit and to recover the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### **Preliminary and procedural matters**

At the outset of the hearing the tenants stated that this is an abusive of process. The tenants stated there was several prior hearings. The tenants stated there was a hearing on December 12, 2018, which heard the landlord’s application for unpaid rent and to keep the security deposit. The tenants stated a settlement agreement was made which comprised a full and final settlement agreement with the all aspects of the landlord’s application. The file number has been noted on the covering page of the decision.

The landlord’s agent argued they did not make any claim for unpaid rent at the prior hearing referred to, it was simply to keep the security deposit.

I have reviewed the previous decision. I find the landlord’s agent is not correct. The landlord made an application for unpaid rent and was seeking to retain the security deposit to be applied towards unpaid rent. The parties came to a settlement agreement at the hearing.

I find the landlord's claim for unpaid rent subject to this application, cannot be heard as a final decision on the issue of unpaid rent was made. Therefore, I dismiss this portion of the landlord's claim without leave to reapply.

#### Issues to be Decided

Is the landlord entitled to a monetary order for loss or other money owed?

#### Background and Evidence

The parties agreed that the tenancy began in 2016. Rent in the amount of \$2,500.00 was payable on the first of each month. The tenancy ended on May 1, 2018.

The parties agreed a move-in and move-out condition inspection report was completed.

The landlord claims as follows:

a.	Breach of lease by running a dog sitting business in the unit (\$150.00 x 10 months)	\$1,500.00
b.	Time spent to deal with tenancy issues	\$ 500.00
c.	Deliberate and malicious misrepresentation of an advertisement of rental unit	\$5,000.00
d.	Cost of the filing fee and postage	\$ 115.00
	<b>Total claimed</b>	<b>\$7,115.00</b>

The landlord's agent testified that the tenants breached the tenancy agreement by having animals in the rental unit. The agent stated that the tenant was operating a dog sitting business. The agent stated that the tenant stated earlier at a hearing that they would make approximately \$150.00, per day.

The landlord's agent testified they determined that they should be entitled to \$150.00 per month for ten months based on the tenant's income for operating a business out of the rental unit and for the additional wear and tear on the rental unit. The landlord seeks to recover the amount of \$1,500.00. Filed documents, including photographs supporting the landlord's claim.

The landlord's agent testified that they should be entitled to recover time spent to deal with tenancy issues. The landlord seeks to recover the cost of \$500.00.

The landlord's agent testified that both the landlord and tenants were advertising the rental unit, as the tenants wanted out of their fixed term agreement. The agent stated that the tenants misrepresented their advertisement by indicating it was a three bedroom.

The landlord's agent testified that the tenants found a new renter. The agent stated that after they entered into the tenancy agreement with the new renters. The new renters said they were told by the previous tenant that they could have other occupants reside in the rental unit.

The female tenant testified that they were operating a dog walking service and once in a while they would take the dogs into the rental unit. However, they were not operating a dog sitting business at the time. The tenant stated that the move-out inspection shows that there was no damage to the rental unit.

The female tenant testified that they advertised the premise as a two bedroom and den. The tenant stated they did say that it is possible to use the den as a bedroom as they have done so in the past. The tenants stated they are not responsible for anything that has happened after their tenancy has ended.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case, even if I accept the landlord's agent testimony that the tenants breached the tenancy agreement for operating a dog sitting business in the rental unit and having unauthorized pets in the rental unit. I find that does not entitled the landlord to claim any portion of the tenant's wages.

Further, the landlord's agent alleged there was additional wear and tear. However, the parties completed a move-out inspection and the unit was left in good condition.

I find the landlord has provided no proof of a damage or loss as a result of the breach. Therefore, I dismiss this portion of the landlord's claim.

The landlord is claiming the cost of time dealing with tenancy issues. However, the landlord is in a business of renting and it is their responsibility to deal with issues of all tenancy matters. I find the landlord is not entitled to compensation for doing their job. Therefore, I dismiss this portion of the landlord's claim.

In this case, the landlord is seeking compensation for the tenants' misrepresentation of the rental unit in an advertisement when trying to find a new renter to take over the lease. Simply because an advertisement is incorrect or misleading, does not impact the written tenancy agreement that the landlord entered into with the new renter. The tenancy agreement is the legal contract, not the advertisement.

I find it was the landlord's responsibility to approve, interview and ensure both the landlord and new renter understood the terms of the tenancy agreement. Not the tenants. The tenants had no control or responsibility when the landlord entered into a tenancy agreement with a new renter.

I find the landlord's claim is unreasonable as they cannot blame the tenants, when it was their responsibility to negotiate the rental contract with the new renter. Therefore, I dismiss this portion of the landlord's claim.

As the landlord claim has been dismissed, I find the landlord is not entitled to recover the cost of the filing fee.

### Conclusion

The landlord's application is dismissed without leave to reapply.

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: January 30, 2020

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Residential Tenancy Branch