



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, FFL, MNSD

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord applied on November 13, 2019 for:

1. A Monetary Order for compensation - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on January 15, 2020 for:

1. An Order for the return of double the security deposit - Section 38.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to monetary amounts claimed?

Are the Tenants entitled to return of double the security deposit?

### Background and Evidence

The following are agreed or undisputed facts: The tenancy under written agreement started on August 31, 2019 for a fixed term to end April 29, 2020. On October 15, 2019

the Tenants gave notice to end the tenancy and moved out of the unit on October 31, 2019.

The Landlord states that it used the Tenants' forwarding address provided at the outset of the tenancy. The Tenants state that they provided their forwarding address by registered mail on January 17, 2020 and that this mail was not collected. The Tenant confirms that their forwarding address is the same address that the Landlord used for the application. The Tenants confirm that they had received the Landlord's application before they sent their forwarding address.

The Landlord states that on October 16, 2019 the unit was advertised online for the same rental rate. The Landlord states that while a few persons showed some interest in November 2019 a new tenant was not secured until a tenancy start date of January 1, 2020. The Landlord claims lost rental income of \$3,100.00 for November and December 2019. The Landlord also claims \$52.00 as the cost of advertising the unit. The Landlord provides a copy of a receipt for the advertisement with a start date of October 16, 2019.

### Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Although I accept the Tenants' evidence that they provided their forwarding address in January 2020, given the undisputed evidence that the Landlord had this forwarding address at the outset of the tenancy and as the Landlord had made its application within 15 days of the end of the tenancy I find on a balance of probabilities that the Tenants are not entitled to return of double the security deposit. I dismiss the Tenants' application.

Section 45(2) of the Act provides that 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.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed. Based on the undisputed evidence of the fixed term tenancy agreement with an end date of April 29, 2020 and the undisputed evidence that the Tenants ended the tenancy earlier than the end date I find that the Tenants breached the Act and the tenancy agreement and are liable for lost rental income as a result of that breach.

Given the Landlord's undisputed evidence of having advertised the unit for the same rental rate immediately after the Tenants gave their notice and obtained a new tenant for January 1, 2020, I find on a balance of probabilities that the Landlord has substantiated its claim to lost rental income for November and December 2019 of **\$3,100.00**. As advertising costs arise in the general course of the Landlord's business and are related to the Landlord's obligation to mitigate its losses, I dismiss this claim. As the Landlord's claim for lost rental income was successful, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$3,200.00**. Deducting the security deposit plus zero interest of **\$775.00** from this entitlement leaves **\$2,425.00** owed by the Tenants to the Landlord.

### Conclusion

The Tenants' application is dismissed.

I Order the Landlord to retain the security deposit plus interest of \$775.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for **\$2,425.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: April 07, 2020

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Residential Tenancy Branch