



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LANGARA GARDENS HOLDINGS LTD & LANGARA GARDENS, and [tenant name suppressed to protect privacy]

## **DECISION**

Code MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords, filed under the Residential Tenancy Act (the “Act”), for a monetary order for loss of rent, for other money owed, to retain the security deposit in partial satisfaction of the claim 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.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

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 issue

At the outset of the hearing the landlord’s agent requested that their monetary claim be amended by reducing the loss of rent. The agent stated that at the time they made their application they had not found a new renter; however, they found a new renter and their tenancy commenced on November 15, 2019. The landlord seek to reduce the amount from \$1,675.00 to \$837.50. I find the amendment is not prejudicial to the tenant as it is reducing the amount claimed. Therefore, I have allowed the amendment.

### Issues to be Decided

Are the landlords entitled to a monetary order for loss of rent and other money owed?  
Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The parties agreed that they entered into a fixed term tenancy which began on April 15, 2019 and was to expire on March 31, 2020. Rent in the amount of \$1,675.00 was payable on the first of each month. The tenant paid a security deposit of \$837.50. The tenancy ended on October 31, 2019.

The landlords claim as follows:

a.	Liquidated damages	\$ 837.50
b.	Carpet cleaning	\$ 150.00
c.	Loss of rent for November 2019 (half month)	\$ 837.50
d.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$1,925.00</b>

At the outset of the hearing the tenant stated that they are not disputing the landlords claim for liquidated damages and carpet cleaning.

### Loss of rent for November 2019 (half month)

The landlord's agent testified that the tenant gave notice to end the tenancy on September 30, 2019, with an effective date of October 31, 2019. The agent stated that this was earlier than the date specified in the fixed term agreement.

The landlord's agent testified that they advertised the rental unit and had some showings; however, they were unable to find a suitable renter, until November 2019, and their new tenancy started on November 15, 2019. The landlord seeks to recover loss of rent in the amount of \$837.50. Filed in evidence is a showing log and advertisements.

The tenant testified that they had no intentions of breaking the tenancy agreement; however, they lost their job and had no other alternative.

The tenant testified that the landlords did show the premises approximately five times in October 2019; however, most of those were during the week.

The tenant testified that they provided the landlord with two potential renters. The tenant stated that the first tenant was to meet the landlord; however, they showed up late and the landlord was not willing to wait.

The tenant testified that the second renters was a mother and daughter, who were willing to pay cash up front for the entire tenancy. The tenant stated that the mother had a visa which expired in four years; however, the only issue was that the daughters school visa was to expire in 11 months. The tenant stated there was no reason that the landlords did not accept these renters as tenants.

The landlord's agent testified that the first person the tenant presented did not show up at the agreed upon time and they never contacted the landlord again to make another appointment. The agent stated if they were truly interested in renting, they would have made another appointment.

The landlord's agent testified that they did not accept the mother and daughter, because the mother only had a visitor visa and they could only remain in the country for short periods of time. The agent stated that the other potential co-tenant was a child who was going to high school.

The landlord's agent testified that they do not take cash up front for the entire tenancy, as this could be considered a breach of the Act and possibly determined an illegal security deposit.

The landlord's agent testified that they were really nice people; however, due to the adult's visa status, they could be removed from the country or denied entry at any time. The agent stated they did not find them to be suitable tenants.

### 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 landlords have 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.

The tenant was not disputing the landlord's claim for liquidated damages or carpet cleaning. Therefore, I find the landlords are entitled to recover liquidated damages in the amount of \$837.50 and carpet cleaning in the amount of \$150.00 for a total amount of **\$987.50**

How to end a tenancy is defined in Part 4 of the Act.

**Tenant's notice (fixed term)**

*45 (2) 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,*

I accept the evidence of both parties that the tenant gave notice to end the tenancy on September 30, 2019, with an effective date of October 31, 2019.

I accept the evidence of the tenant that they only ended the tenancy because they lost their job, which is reasonable under the circumstance if they could no longer afford the rent. However, under section 45(2) of the Act the tenant could not legally end the tenancy until the date specified in the tenancy agreement. I find that the tenant has breached the Act as the earliest date they could have legally ended the tenancy was March 31, 2020.

Since the tenant failed to comply with the Act, the landlords are entitled to an amount sufficient to put the landlords in the same position as if the tenant had not breached the Act. This includes compensating the landlords for any loss of rent up to the earliest time that the tenant could have legally ended the tenancy.

However, under section 7(2) of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss.

The duty to minimize the loss begins when the party entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will have an effect on a monetary claim, where the party who claims compensation can substantiate such a claim.

The rental unit was advertised for rent within a reasonable time.

I accept the tenant presented two possible new renters. The first potential renter was late for their appointment and made no effort to rebook a new appointment with the landlords. That leaves me to believe there was no real interest in renting the premise.

The second potential renters were a mother and daughter. While they may have been able to pay cash up front for their entire tenancy, that alone does not automatically make them suitable. The mother only had a travel visa, which does not allow one to

live in the country for any extended period of time and can be revoke at any time. I do not find the landlord's position unreasonable that they were not suitable due to their visa status.

Second the other potential co-renter was a child. The landlord is under no obligation to rent to children. I find the landlords had the right to deny their tenancy based on suitability.

In this case, I am satisfied that the landlords made reasonable efforts to minimize the loss. The landlords were able to find a new renter and their tenancy commenced on November 15, 2019. This releasing the tenant from their obligation under their fixed term agreement which was to expire on March 31, 2020. I find the landlords did suffer a loss of rent from November 1 to November 14, 2019. Therefore, I find the landlords are entitled to recover the loss of rent in the amount of **\$837.50**.

I find that the landlords have established a total monetary claim of **\$1,925.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlords retain the security deposit of **\$837.50** in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$1,087.50**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The landlords are granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlords are granted a formal order for the balance due.

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: April 02, 2020

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Residential Tenancy Branch