



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Aquaterra Management and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for a Monetary Order for damage or compensation under the *Act*, pursuant to section 67.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties confirmed that the landlord was served with this application for dispute resolution via registered mail. I find that the landlord was served in accordance with section 89 of the *Act*.

### Issue to be Decided

Are the tenants entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on June 1, 2019 and ended on December 31, 2019. This was originally a fixed term tenancy set to end on May 30, 2020. The tenants ended the tenancy before the end of the fixed term. Monthly rent in the amount of \$1,800.00 was payable on the first day of each month. A security deposit of \$900.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the tenants provided the landlord with notice to end tenancy in writing on November 30, 2020. Both parties agree that the tenant authorized the landlord, in writing, to retain \$9,500.00 from the tenant's security deposit.

The landlord testified that the subject rental property was re-rented for April 1, 2020 at a rental rate of \$1,690.00. The landlord testified that since the property was re-rented, the landlord did not seek the entire \$9,500.00, which represented the highest possible loss incurred by the landlord, but only loss of rental income as follows:

Item	Amount
Loss of rental income January to March 2020	\$5,400.00
Los of rental income April to May 2020	\$220.00
Less security deposit	-\$900.00
<b>Total</b>	<b>\$4,720.00</b>

The tenants testified that the landlord hired a collections company to get the tenants to pay the above damages for loss of rental income. The tenants testified that the collections company is demanding the tenants to pay \$4,720.00. The tenants are seeking this amount from the landlord. I asked the tenants what section of the Act, tenancy agreement or Regulation they believed the landlord breached, the tenants testified that they did not know.

### Analysis

Section 67 of the Act states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director

may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the tenant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

The tenants were not able to point to any section of the *Act*, Tenancy Agreement or Regulation that they believe the landlord breached. I find that the tenant has not proved, on a balance of probabilities, that the landlord breached any section of the *Act*, Tenancy Agreement or Regulation. The tenants' application is therefore dismissed without leave to reapply.

### Conclusion

The tenant'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 18, 2021

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Residential Tenancy Branch