



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: MNDL-S, MNDCL-S, FFL, MNSDS-DR

### Introduction

The landlord applied for compensation against their former tenants under section 67 of the *Residential Tenancy Act* ("Act"). The tenants made a cross-application for the return of their security deposit, under section 38 of the Act.

The landlord attended the hearing, which was held by teleconference. The tenants did not attend the hearing. I am satisfied based on the tenants' application that they were provided with the Notice of Dispute Resolution Proceeding and knew of the hearing.

No issues of service were raised, though the landlord mentioned that she did not receive any documentary evidence from the tenants.

### Issues

1. Is the landlord entitled to compensation, including the filing fee?
2. Are the tenants entitled to their security deposit being returned?

### Background and Evidence

The tenancy began on May 1, 2020 and ended on August 31, 2020, after the tenants broke a fixed term tenancy which was supposed to end on April 30, 2021. The tenants gave notice to end the tenancy on August 1, 2020. Monthly rent was \$2,800 and the tenants paid a security deposit of \$1,400, which the landlord holds in trust pending the outcome of her application. A copy of the written tenancy agreement was in evidence.

As a result of the tenants ending the fixed term tenancy early, because it was difficult for the landlord to find a new tenant during the pandemic, and because the landlord had to travel overseas for a family emergency, she was unable to rent the rental unit in a timely manner and ended up losing rental income of \$4,200.00.

(It should be noted that the landlord revised her monetary claim to a much lower amount after she hired a property manager to find new tenants.

The landlord had originally sought compensation of \$535.50 for property damage, but this amount was previously paid by one of the tenant's parents. Thus, the landlord is no longer seeking this amount.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

The tenants ended the fixed term tenancy early and in breach of section 45(2) of the Act, which prohibits ending a fixed term tenancy before its stated end date. As a result of the breach by the tenants the landlord suffered a loss of \$4,200.00. The landlord did what was reasonable to minimize her losses. Therefore, taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving her claim for \$4,200.00.

As the landlord was successful in her application, I award her \$100.00 for the application filing fee, pursuant to section 72 of the Act. The total award is \$4,300.00.

The landlord advised that she seeks to retain the tenants' security deposit of \$1,400.00 in full satisfaction of the above-noted award and that she chooses to waive the remaining \$2,900.00.

Given the above, I will not issue a monetary order for the balance, which the tenants would have been legally obligated to pay but for the landlord's waiver of this amount.

Regarding the tenants' application, they failed to attend the hearing and did not meet the onus of proving their claim. Thus, I dismiss their application without leave to reapply.

Conclusion

**I HEREBY ORDER, pursuant to section 38(4)(b) of the Act, that the landlord retain the tenants' security deposit of \$1,400.00 in full satisfaction of her claim.**

I dismiss the tenants' application without leave to reapply.

This decision is final and binding, except where permitted under the Act, and is made on authority delegated to me under section 9.1(1) of the Act.

Dated: January 5, 2021

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Residential Tenancy Branch