



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, MNSD, FFL

### Introduction

On December 13, 2020, the Landlords submitted an Application for Dispute Resolution under the Residential Tenancy Act seeking a monetary order for loss of rent; for money owed or compensation for damage or loss; to retain a security deposit and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlord's agent ("the Landlord") and the Tenants attended the hearing. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony. The parties confirmed that they exchanged the documentary evidence before me.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties were informed that recording the hearing is not permitted.

### Issues to be Decided

- Is the Landlord entitled to a monetary order to recover a loss of rent owing under the tenancy agreement?
- Is the Landlord entitled to money owed or compensation for damage or loss?
- Is the Landlord entitled to keep the security deposit towards the claims?
- Is the Landlord entitled to recover the cost of the filing fee?

### Background and Evidence

The Landlord and Tenants testified that the tenancy began on June 1, 2020, as a one-year fixed term tenancy to continue until May 31, 2021. Rent in the amount of \$1,850.00 was to be paid to the Landlord by the first day of each month. The Tenants

paid the Landlord a security deposit of \$925.00. The Landlord provided a copy of the tenancy agreement. The tenancy agreement contains a liquidated damages clause which requires the Tenants to pay a fee of \$3,700.00 for the costs of re-renting the unit if the fixed term agreement is ended early.

The parties testified that the Tenants moved out of the rental unit at the end of November 2020.

### Loss of Rent

The Landlord testified that the Tenants ended the fixed term tenancy early by moving out of the unit on November 30, 2020 prior to the end of the fixed term agreement and the Landlord suffered a loss of rent owing under the tenancy agreement for the months of December 2020, January 2021, and February 2021.

The Landlord is seeking to recover a loss of three months' rent in the amount of \$5,550.00.

The Landlord provided testimony that he attempted to re-rent the unit by advertising on a number of local websites starting at the beginning of November 2020. The Landlord provided a copy of an advertisement dated November 30, 2020 which indicates it was posted 25 days prior.

The Landlord testified that the rental unit was advertised at the same amount of rent that the Tenants were paying until December 2020 when the advertised rent was lowered to \$1,800.00. In January 2020, the Landlord again lowered the advertised rent to \$1,750.00.

The Landlord was able to re-rent the unit starting March 1, 2021 at \$1,750.00 per month. The Landlord provided a copy of the tenancy agreement for the new tenant.

The Landlord is also seeking to recover the loss of \$100.00 per month in rent for March 2021, April 2021, and May 2021 due to a loss in the difference in rent received. The Landlord is seeking to recover a loss of monthly rent in the amount of \$300.00.

In response, the Tenants testified that they sent the Landlord an email in the middle of October 2020 that they were moving out at the end of November 2020. The Tenants stated that the Landlord informed them not to advertise the rental unit because the Landlord was going to do it.

The Tenants provided testimony that they knew people who were interested in renting the unit and gave them the number of the Landlords office. The Tenants stated that they gave two potential tenants the information and two parties viewed the unit. The Tenants stated that the Landlord told the interested parties that they needed to sign a 1-year lease.

In reply, the Landlord testified that they followed up with a person referred by the Tenants; however, they did not get a response from the person until December 2020 and the person's application was incomplete. When the Landlord followed up asking for more information, the applicant then asked to have the rent reduced.

#### Liquidated Damages \$625.00

The Landlord submitted that the tenancy agreement has a liquidated damages clause that requires the Tenants to pay \$3,700.00 as liquidated damages for the Landlord's costs of re-renting the unit. The Landlord stated that the actual cost for the leasing fees to re-rent the unit amount to \$918.75 and the Landlord is seeking to recover that amount. The Landlord provided an invoice for the leasing fees.

In reply, the Tenants appeared to have been unaware about the liquidated damages clause in the tenancy agreement. The Tenants did not provide any response other than stating that they thought the security deposit would cover the leasing fee.

#### Late Rent Payment

The Landlord is seeking to recover a late rent payment fee of \$25.00 for the month of November 2020. The Landlord testified that section 8 of the tenancy agreement contains a term permitting the Landlord to charge this late fee.

The Landlord testified that the Tenants paid the rent on November 2, 2020 which was late.

In reply, the Tenants testified that since they were moving out of the unit, they wanted to put a stop payment on the December 2020 rent. The Tenants deleted their automatic payment account in late October 2020 and did not understand that it would cancel the automatic payment for November 2020 rent. When the Tenants were informed that the rent for November was not paid, they paid the rent on November 2, 2020. The Tenants argue that the November 1, 2020 was a Sunday and the rent would not have been processed until the next day and therefore it should not be considered a late payment of rent.

In reply, the Landlord testified that the rent payment system does conduct bank transactions on the weekends and the November rent should be considered late.

### Security Deposit \$925.00

The Landlord applied for dispute resolution on December 13, 2020 and is seeking to retain the security deposit of \$925.00 in partial satisfaction of the claim for loss of rent.

### Analysis

Section 7 of the Act states that a Landlord or Tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations, or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I make the following findings:

### Loss of Rent

The Residential Tenancy Branch Policy Guideline #3 Claims for Rent and Damages for Loss of Rent deals with situations where a Landlord seeks to hold a Tenant liable for loss of rent after the end of a tenancy agreement. The Guideline provides:

*The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy. For example, a tenant has agreed to rent premises for a fixed term of 12 months at rent of \$1000.00 per month abandons the premises in the middle of the second month, not paying rent for that month. The landlord is able to re-rent the premises from the first of the next month but only at \$50.00 per month less. The landlord would be able to recover the unpaid rent for the month the premises were abandoned and the \$50.00 difference over the remaining 10 months of the original term.*

*In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.*

I find that the Tenants ended the fixed term tenancy early and are responsible to pay the rent owing under the tenancy agreement until the property could be re-rented.

I have reviewed the Tenants' October 18, 2020 email sent to the Landlord. The email makes no mention that the Tenants requested permission to sublet the tenancy to another person or assign the tenancy to another person. The Tenants wanted to end the tenancy and therefore I find that the Landlord was entitled to advertise the rental unit as a one-year lease.

I find that the Landlord complied with his duty to mitigate the loss by attempting to re-rent the property by advertising prior to when the Tenants moved out. I accept the Landlord's testimony and evidence that he advertised the rental unit and initially attempted to re-rent the unit at the same amount of rent.

I find that it is reasonable for the Landlord to have lowered the advertised rent while searching for a Tenant. It is possible that the Landlord would not have found a Tenant by March 1, 2021 if the rent had not been lowered, and the Tenants may have faced a claim for a further loss of rent.

While I accept that the Tenants were helpful by referring interested parties to the Landlord, it appears none of these people entered into a tenancy agreement with the Landlord.

I find that the Tenants are responsible for the loss of rent suffered by the Landlord due to the Tenants breaching the fixed term tenancy agreement. I award the Landlord the amount of \$5,850.00.

#### *Lease Break Fee \$918.75*

I find that the tenancy agreement contains a term regarding liquidated damages if the tenancy is ended early. I find that the Tenants moved out of the rental unit early and the Landlord needed to find a new tenant. I find that Landlord is entitled to claim the costs involved with finding a new tenant.

I award the Landlord the amount of \$918.75.

#### *Late Rent Fee*

I have reviewed the tenancy agreement and I find that the agreement provides that rent is due on or before the first day of each month and that the Landlord may charge a \$25.00 fee for late payment of rent.

I find that the rent due under the tenancy agreement for November 2020 was not paid until November 2, 2020 and is therefore late.

I award the Landlord the amount of \$25.00.

#### Security Deposit \$925.00

I find that the Landlord filed claim against the security deposit within 15 days of the Tenants vacating the rental unit. I order that the Landlord can keep the security deposit of \$925.00 in partial satisfaction of the award for loss of rent.

#### Filing Fee

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

#### Monetary Award

I find that the Landlord has established a total monetary award of \$6,893.75 comprised of a loss of rent; liquidated damages, late rent payment charge; and the \$100.00 fee paid by the Landlord for this hearing.

After setting off the security deposit of \$925.00 towards the award of \$6,893.75, I find that the Landlord is entitled to a monetary order in the amount of \$5,968.75. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

#### Conclusion

The Tenants ended a fixed term tenancy agreement early and are responsible to pay the rent or pay compensation for a loss of rent until the Landlord found a new tenant.

The Landlord was successful with his claims for loss of rent, liquidated damages, and a late rent charge.

I order that the Landlord can keep the security deposit in the amount of \$925.00 in partial satisfaction of the Landlords award.

The Landlord is granted a monetary order for the balance of \$5,968.75.

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: May 5, 2021

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Residential Tenancy Branch