



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC-S, MND-S, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- compensation for a monetary loss or other money owed;
- compensation for alleged damage to the rental unit by the tenant;
- authority to keep the tenants' security deposit to use against a monetary award; and
- to recover the cost of the filing fee.

The landlord attended the hearing; however, the tenants did not attend.

The landlord stated he served each tenant with his Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by registered mail on, May 27, 2021. The landlord filed into evidence the Canada Post customer receipts containing the tracking numbers to confirm this mailing.

The landlord also filed a statement signed by a witness that the landlord hand-delivered a copy of the dispute resolution package to each tenant, on May 28, 2021. The tenants filed evidence for the hearing, although they did not attend to present their evidence.

I find the tenants were sufficiently served the landlord's application as required by the Act and the hearing proceeded in the tenants' absence.

The landlord was informed at the start of the hearing that recording of the dispute resolution is prohibited under the RTB Rules of Procedure (Rules) Rule 6.11, and the landlord confirmed by affirmed testimony he was not recording the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules. However, not all details of the submissions are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

#### Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenants, to retain the tenants' security deposit to partially satisfy a monetary award, and to recover the cost of the filing fee?

#### Background and Evidence

This tenancy began on March 6, 2021, for a fixed term through March 31, 2022, monthly rent of \$1,000, due on the 1<sup>st</sup> day of the month, and a security deposit of \$500 being paid by the tenants to the landlord. Filed into evidence was a copy of the written tenancy agreement.

The landlord retained the tenants' security deposit, having made this claim against it.

The landlord's monetary claim as shown in his filed evidence is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Fixed term tenancy ended early	\$2,000.00
2. Not giving access to show rental unit	\$2,000.00
3. Filing fee	\$100.00
<b>TOTAL</b>	<b>\$4,100.00</b>

At the hearing, the landlord forfeited his claim of \$2,000 for not giving access to the rental unit, as he could not recall the claim and had provided no evidence in support.

As to the remaining claim of \$2,000, for loss of rent revenue, the landlord submitted that the tenants were obligated to pay rent through the end of the fixed term, in this case

March 31, 2022. Instead, the tenants gave written notice on April 30, 2021, that they were vacating the rental unit by May 30, 2021. The landlord submitted the tenancy ended on May 30, 2021, when the tenants vacated the rental unit. Filed in evidence was the tenants' written notice to end the tenancy.

The landlord submitted that he was unable to find new tenants until August 2021, despite advertising the rental unit. The landlord explained that he could not find new tenants earlier as the tenants prevented him from showing the rental unit to prospective tenants throughout May 2021, citing Covid as a reason.

The landlord claims a loss of rent revenue of \$2,000 in total, or \$1,000 for June and July 2021, each.

The tenants did not attend the hearing to provide their submissions in response to the landlord's application.

### Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

In light of the tenants' failure to appear to provide a rebuttal to the landlord's evidence and application, despite being duly served, I accept the landlord's undisputed evidence.

*Residential Tenancy Policy Guideline #16* notes, "The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due." This *Guideline* continues by explaining, "the party who suffered the damage or loss can prove the amount of or value of the damage or loss."

Section 45(2) of the Act states that a tenant may end a fixed term tenancy by giving the landlord written notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and 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.

In other words, a tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term.

In the case before me, there was no dispute that the tenants breached the terms of their written tenancy agreement by ending the tenancy before March 31, 2022. I find the tenants are liable to the landlord for monthly rent under the terms of the tenancy agreement, subject to the landlord's obligation to minimize their loss.

In this case, the tenants did not pay rent for the month after the tenancy ended, or June 2021, and I find the evidence shows that the tenants prevented the landlord from showing the rental unit after receiving the tenants' notice, preventing him from finding a tenant earlier.

As a result, I find the landlord submitted sufficient evidence to meet their requirement to do whatever is reasonable to minimize their loss, as he secured new tenants by August 2021.

I therefore find that the landlord has established a monetary claim of **\$2,000**, comprised of the loss of rent revenue of \$1,000 for June 2021 and \$1,000 for July 2021, due to the tenants' breach of the Act and the tenancy agreement.

Due to his successful application, I grant the landlord recovery of his filing fee of **\$100**.

Using the offsetting provisions contained in section 72 of the Act, the landlord may withhold the tenants' security deposit in partial satisfaction of the monetary award.

### Conclusion

I issue a monetary order of **\$1,600** in favour of the landlord as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Loss of rent revenue for June 2021	\$1,000.00
2. Loss of rent revenue for July 2021	\$1,000.00
3. Filing fee	\$100.00
4. <i>Less security deposit</i>	<i>(\$500.00)</i>
<b>TOTAL</b>	<b>\$1,600.00</b>

The landlord is provided with a Monetary Order (Order) in the above terms and the tenants must be served with this Order as soon as possible to be enforceable. Should the tenants fail to comply with this Order, this order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: December 3, 2021

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Residential Tenancy Branch