



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNDL-S, MNDCL-S, FFL**

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damages and loss pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord was represented by their agent (the "landlord") who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord was made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and they testified that they were not making any recordings.

The landlord testified that they served each of the tenants with the notice of hearing and evidence by registered mail sent to the forwarding address provided by the tenants on September 26, 2021. The landlord submitted two valid Canada Post tracking receipts as evidence of service. Based on the evidence I find that the tenants are deemed served with the landlord's materials on October 1, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

At the outset of the hearing the landlord requested to amend the amount of their monetary claim in their application saying that additional rental income losses has come due since filing the application. Pursuant to section 64(3)(c) of the Act and Rule 4.2 of the Rules of Procedure as additional rent coming due is reasonably foreseeable, I amend the landlord's application to increase their monetary claim for loss of rental income to \$3,875.00.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?  
Is the landlord entitled to retain the deposits for this tenancy?  
Is the landlord entitled to recover their filing fee from the tenant?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The landlord provided undisputed evidence regarding the following facts. This fixed-term tenancy began on January 1, 2021 and was scheduled to end on January 1, 2022. The monthly rent was \$1,550.00 payable on the first of each month. A security deposit of \$775.00 and pet damage deposit of \$775.00 were paid at the start of the tenancy and are still held by the landlord. The parties participated in a move-in inspection and prepared a condition inspection report at the start of the tenancy.

The tenants gave written notice to end the tenancy by email correspondence dated August 17, 2021. The tenants made partial payment of rent on September 1, 2021 in the amount of \$775.00 and vacated the rental unit on September 15, 2021. The landlord advertised the suite, interviewed potential occupants including those suggested by the tenants but was unable to find a new occupant to commence a tenancy until December 1, 2021. The landlord seeks rental income losses from September 16, 2021 to December 1, 2021 in the amount of \$3,875.00.

The parties agreed to a move-out inspection on September 15, 2021 at 4:00pm. The landlord attended at that time, but the tenants failed to participate in an inspection. The landlord offered the tenants a second opportunity on September 21, 2021. The tenants again failed to participate. The landlord offered the tenants a final notice to schedule an inspection using the prescribed form on September 21, 2021 providing a date of

September 30, 2021. The tenants failed to participate on that occasion and the landlord completed the condition inspection report in their absence.

The landlord found the rental unit required considerable cleaning, work and repairs due to the state left by the tenants. The landlord gave detailed testimony of the condition of the suite and submitted numerous photographs in support of their claim. The landlord says that the total amount of the expenditure to restore the rental unit to its pre-tenancy condition is \$1,851.40.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 7 of the *Act* explains, “If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord 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.”

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, “Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.”

Section 45(2) provides that a tenant may end a fixed term tenancy by giving notice that is effective no earlier than the date specified in the tenancy agreement.

In the present case the undisputed evidence is that the tenants gave notice to end the fixed-term tenancy on August 17, 2021. The landlord quickly began advertising the rental unit on August 23, 2021 and taking steps to mitigate any rental income losses. I

am satisfied with the cogent, detailed testimony of the landlord that they took appropriate steps. Despite their best efforts they were unable to find a suitable new occupant until December 1, 2021.

Based on the evidence, I find that the tenants breached the fixed-term tenancy agreement by ending it before its full term, I find that the landlord has sufficiently demonstrated that the full amount of the loss incurred are due to the tenants, and they have taken reasonable steps to mitigate and minimize any losses. I accept the undisputed evidence of the landlord that they incurred rental income losses from September 16, 2021 to December 1, 2021 in the amount of \$3,875.00 and issue a monetary award in that amount accordingly.

I am satisfied with the landlord's evidence that the rental unit was in a state of disrepair requiring considerable cleaning and work due to the tenants. I find the landlord's consistent, detailed testimony, the multiple photographs submitted into documentary evidence and the third party receipts and estimates from other companies to be sufficient to meet their evidentiary burden. I accept that the total amount of their losses is \$1,851.40 and issue an award in the landlord's favour for that amount.

As the landlord was successful in their application, they are entitled to recover the filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in full satisfaction of the monetary award issued in the landlord's favour

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$4,276.40, allowing the landlord to recover the rental income losses, damages and filing fee and to retain the security and pet damage deposit for this tenancy. The tenants must be served with this Order as soon as possible. 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*.

Dated: May 9, 2022

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Residential Tenancy Branch