



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL-S, FFL

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

The hearing was originally scheduled to be heard on July 5, 2022, and I adjourned the hearing to July 14, 2022 in order to permit evidence to be exchanged by the parties by email, and my Interim Decision was provided to the parties. The landlord and one of the tenants attended the hearing on both scheduled dates, and the tenant also represented the other named tenant. The landlord and the tenant each gave affirmed testimony, and the landlord called 1 witness who also gave affirmed testimony. The parties were given the opportunity to question each other and the witness, and to give submissions.

The parties confirmed that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement, and more specifically for recovery of rent?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

**The landlord** testified that this fixed-term tenancy began on October 1, 2021 and was to expire on September 30, 2022, then family would be moving into the rental unit and the parties signed a Mutual Agreement to End Tenancy effective September 30, 2022. However, at the end of October, 2021 the tenants gave notice to end the tenancy effective November 29, 2021.

Rent in the amount of \$2,500.00 was payable on the 1<sup>st</sup> day of each month. On September 17, 2021 the landlord collected a security deposit from the tenants in the amount of \$1,250.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a carriage house, and the landlord resides on the rental property.

A move-in condition inspection report was completed at the beginning of the tenancy and a move-out condition inspection report was completed at the end of the tenancy, on November 29, 2021. The tenants told the landlord during the move-out inspection what the tenants' forwarding address was, while the landlord wrote it down.

The landlord claims that the tenants broke the lease which left the landlord without a tenant for December, 2021 and the landlord claims \$2,500.00 for December's rent and recovery of the \$100.00 filing fee. The landlord seeks to keep the \$1,250.00 security deposit in partial satisfaction.

The landlord advertised the rental unit on October 29, 2021 in 3 local websites for \$2,550.00 per month which included an extra parking spot. It was re-rented effective February 1, 2022 for \$2,500.00 per month.

The tenants have not served the landlord with an Application for Dispute Resolution claiming the security deposit.

**The landlord's witness** testified that he was in attendance at the rental unit on November 14, 2021 when 6 groups of prospective tenants viewed it. An application to rent was sent to a party, who backed out wanting to rent in January, 2022, and were not ready to move in December, 2021. Two other ladies were interviewed and seemed very interested, but also backed out. Only the 2 groups of the 6 groups showed interest.

The witness was also present for viewings on November 20, 2021, and the witness showed the rental unit to another prospective tenant by video, who was not able to get

away to view it personally and said that he would pay up front and everything was all good, but on follow-up, the person ignored the witness' calls. No others had any interest in renting.

**The tenant** testified that as far as the tenants knew, they gave proper notice to end the tenancy, and didn't realize that a periodic tenancy was the same as a month-to-month tenancy. The tenants liked the rental unit, but the tenant's husband's work changed.

The tenant also spoke with a lady and advised that the tenants were moving out. The tenant asked the landlord for the advertisement because the tenant couldn't find it. The landlord said that the request was received, but had people interested. The second time the tenant contacted the landlord, the landlord didn't respond.

The tenants had not rented for 35 years and did not know that a fixed term meant that the tenants had an obligation to stay to the end of the fixed term.

### Analysis

A tenant may end a periodic, or a month-to-month tenancy by giving the landlord not less than 1 month's notice in writing, which must be given before the date rent is payable under the tenancy agreement. A tenant may not end a fixed term tenancy prior to the end date of the fixed term without written consent to end the tenancy from the landlord. In this case, the tenants were bound by a fixed term for 1 year and only remained in the rental unit for about 2 months. The landlord has claimed 1 month of rent even though the rental unit didn't re-rent until February 1, 2022, and did not claim rent for January.

Although I advised the parties of the requirement under the *Residential Tenancy Act*, the law also specifies that any party who makes a claim must do whatever is reasonable to mitigate. In the case of breaching a fixed term, the landlord must establish that the landlord did whatever was reasonable to re-rent.

The landlord testified that the advertisements were placed on 3 websites but has not provided copies, and testified that showings were held on November 14 and 20, 2021. I accept that testimony. The tenant testified that the landlord was asked where to locate the advertisements, but the landlord did not give a response, and did not indicate any reason for that in her testimony. The landlord also testified that it was re-rented

effective February 1, 2022 for \$2,500.00 but didn't specify why. By advertising the rental unit for more rent than the tenants had been paying, the landlord has not mitigated. Perhaps it would have re-rented for December 1, 2021 if the advertisements showed rent at \$2,500.00 instead of \$2,550.00.

Since the landlord has not mitigated, the landlord's claim cannot succeed, and I dismiss the application in its entirety without leave to reapply.

The landlord currently holds a security deposit, and I refer to Residential Tenancy Policy Guideline 17 – Security Deposit and Set-Off, which states, in part:

**C. RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH DISPUTE RESOLUTION**

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit; or
- a tenant's application for the return of the deposit.

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

Therefore, I grant a monetary order in favour of the tenants as against the landlord for the return of the security deposit in the amount of \$1,250.00.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,250.00.

This order is final and binding and may be enforced.

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: July 19, 2022

---

Residential Tenancy Branch