



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

### Dispute Codes:

MNR, MNSD, FF

### Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. It is apparent from the Application that the Landlord is also seeking a monetary Order for compensation for damage or loss, and the Application was amended accordingly.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant via registered mail at the address noted on the Application, on December 10, 2008. A Canada Post with tracking number was submitted. The Canada Post website shows the mail was returned to the sender on January 04, 2008, although the Landlord stated he has not yet received it. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

### Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary Order for loss of revenue from December of 2008 and January of 2009; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Act*.

### Background and Evidence

The Landlord submitted a tenancy agreement that shows this was a fixed term tenancy that was scheduled to begin on September 01, 2008 and to end on September 01, 2009. The agreement shows that the Tenant was required to pay monthly rent of \$1,480.00. The Landlord stated that the Tenant paid a security deposit of \$750.00 on August 21, 2008.

The Landlord stated that sometime prior to October of 2008, the Tenant gave written notice, via email, of her intent to vacate the rental unit on November 30, 2008. He stated that she did vacate the rental unit on November 30, 2008.

The Landlord is seeking compensation for loss of revenue from December of 2008 and January of 2009. He provided the following evidence that is relevant to his claim for compensation:

- He stated that he has been trying to sell the rental unit but the Tenant was not willing to permit him to show the rental unit to prospective buyers
- He stated that he was unable to show the rental unit to prospective renters because the Tenant would not give him permission to enter the rental unit
- He submitted copies of emails from the Tenant that indicate that the Tenant would not give her permission to show the rental unit
- He stated that he did not wish to enter the rental unit with written notice, as he feared the Tenant would retaliate by damaging his property
- He stated that the Tenant had not damaged his property during this tenancy and he only based this fear on her "unusual behaviour"
- He stated that he did not advertise the rental unit until November 15, 2008 due to the Tenant's refusal to permit showings
- He stated that he posted the rental unit on Craig's list "maybe on" November 15, 2008, however he submitted no evidence to corroborate this statement
- He stated that he posted the rental unit another two times on Craig's list, although he does not recall the dates and he did not submit evidence to corroborate this statement
- He stated that nobody responded to any of his ads on Craig's list
- He stated that he did not advertise the rental unit through any other medium
- He stated that the rental unit could not be rented for December and January as it is typically a slow period in the rental market
- He stated that he has not yet rented or sold the rental unit.

### Analysis

The evidence shows that the Tenant ended this fixed term tenancy agreement on November 30, 2008, although the end date of the fixed term tenancy was September 01, 2009. The evidence shows that the Tenant gave the Landlord one full month's notice of her intent to end the tenancy on November 30, 2008.

I find that the Tenant breached the fixed term tenancy when she ended the tenancy prior to the end of the fixed term tenancy. Section 7(1) of the *Act* stipulates, in part, that a tenant must compensate a landlord for any damages or loss that result from the tenant's failure to comply with their tenancy agreement. In these circumstances, the

Landlord contends that he suffered a loss of two month's rent due to the early end of the fixed term tenancy.

Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from the tenant's non-compliance with the tenancy agreement must do whatever is reasonable to minimize the damage or loss. In these circumstances, I find that the Landlord has submitted insufficient evidence to establish that he made reasonable efforts to find new tenants. In reaching this conclusion, I considered the following:

- The Landlord submitted no evidence to corroborate his statement that he advertised the rental unit on Craig's list
- The Landlord was not certain of any of the dates he advertised the rental unit on Craig's list, which causes me to question the accuracy of his statement
- The Landlord did not even attempt to locate a new tenant until approximately November 15, 2008, which limited his ability to find a new tenant for December 01, 2008
- The Landlord did not advertise through any other medium, which limited his ability to find a new tenant for December 01, 2008
- The Landlord had a full month's notice that the rental unit would be vacant on December 01, 2008
- The Landlord stated that he did not attempt to show the rental unit in November because he did not have the Tenant's permission, although he had the right to enter the rental unit with written notice, pursuant to section 29(1)(b) of the *Act*
- The Landlord's alleged fear that the Tenant would damage his property if he showed the unit without her permission is not reasonable, given that the Tenant had not damaged his property or acted unreasonably during this tenancy
- The Landlord's stated intent of selling the property causes me to question whether he truly wanted to find a new tenant
- The Landlord's statement that it is difficult to find new tenants in December and January is not reflective of the current rental market, which causes me to question whether he made reasonable efforts to locate a new tenant
- The Landlord's statement that he received no responses to his advertisements on Craig's list is not reflective of the current rental market, which causes me to question whether he made reasonable efforts to locate a new tenant.

### Conclusion

As I find that the Landlord did not take reasonable steps to find a new Tenant for December 01, 2008, which would have mitigated any loss of revenue, I find that the Landlord is not entitled to compensation for loss of revenue. I hereby dismiss the Landlord's claim for compensation for lost revenue.

I find that find that the Landlord's application has been without merit and I hereby dismiss his application to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

As the Landlord has not established that he has a monetary claim, I hereby dismiss his application to retain any portion of the Tenant's security deposit.

Date of Decision: January 29, 2009

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