



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes           MNSD, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a Monetary Order for compensation for loss or damage under the Act and a Monetary Order to recover the filing fee. The landlord has also applied for an Order to keep all or part of the security deposit.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were sent to the tenant by registered mail on or about June 30, 2009.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Was this a fixed term tenancy?
- Is the landlord entitled to recover loss of revenue because the tenant moved from the unit before the end of the fixed term?
- Is the landlord entitled to keep the tenants security deposit?
- Is the landlord entitled to recover the filing fee for this application?

### Background and Evidence

This tenancy started on September 01, 2008. This was a fixed term tenancy due to expire on August 31, 2009. The tenants and landlord signed a tenancy agreement on August 26, 2008

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and the landlord has ticked both the month to month tenancy and the fixed term tenancy box. The tenants paid rent of \$1,600.00 for this unit which was due in advance on the 30th of each month. The tenants paid a security deposit of \$800.00 on September 01, 2008.

The landlord testifies that this was a fixed term tenancy and he had ticked the month to month box as he believed that meant the rent was due each month. He testifies that the tenant knew it was a fixed term as the date when the tenancy would end was clearly stated on the tenancy agreement. The landlord also testifies that in one of the tenants' e-mails to the landlord he states that his rental contract is until the end of August, 2009 and in this e-mail the tenant asks if he can pay rent on a monthly basis from April, 2009.

The tenants gave notice to end the tenancy on April 03, 2009 and left the rental unit on April 28, 2009. The landlord was unable to re-rent the unit as he was out of the country and his parents moved into the unit in August, 2009.

The landlord claims that the tenant gave him Notice to end the tenancy by e-mail and he requested the tenancy continue until May 30, 2009 or the beginning of June, 2009. The landlord was overseas at the time and e-mail was the only means of communication due to time factors. The landlord claims the tenant asked him if a friend of theirs could rent the unit instead at a reduced rent of \$800.00. The landlord is claiming a loss of revenue for May and June 2009 only and seeks to keep the tenants security deposit in partial payment.

The tenant e-mailed the landlord with his intentions to move from the unit on March 30, 2009. The tenant did not provide any further information in this e-mail about when he would be moving out. The landlord responded asking the tenants not to terminate the rental agreement until the first week in June, 2009. On April 02, 2009 the tenant e-mailed the landlord to inform him that they would be looking at moving out by May 01, 2009 if possible. The landlord replied to this e-mail asking the tenant to stay until June 01, 2009. On April 03, 2009 the tenant confirmed by e-mail that they will definitely move out by the end of April, 2009. The landlord replies to this e-mail stating that the tenants must provide at least one months notice and the tenancy will continue until the end of May, 2009 as agreed.

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The tenant again e-mailed the landlord to explain that he had to move by the end of April and understood that he had not provided one months notice as agreed and requests that the landlord rents the unit to a friend of his to mitigate their loss. The tenant suggests the landlords' wife interviews this gentleman and do any necessary reference checks.

The landlord explains that as he and his wife have divorced since the tenancy agreement was in place he refused the tenants offer to sublet the unit to this gentleman as he wanted to be able to meet with him himself and carry out the checks required as the unit was fully furnished. As the landlord was overseas at the time this was not possible and he states that it was unreasonable for the tenant to expect him to sublet the unit for \$800.00 per month instead of \$1,600.00.

## Analysis

The landlord and tenant both agree that the tenant moved from the rental property at the end of April, 2009 and the condition inspection was completed on May 02, 2009. I find the tenant ended the tenancy early before the expiry date on the tenancy agreement of August 31, 2009. There is some confusion on the tenancy agreement signed by both parties whether this is a month to month tenancy or a fixed term tenancy as the landlord has ticked both boxes I find that the tenant has demonstrated that he understood this to be a fixed term tenancy until the end of August, 2009 by the e-mail he sent the landlord on March 30, 2009.

The landlord e-mails appear to agree that the tenant could move out early and requests that the tenancy continues until the end of May, 2009. However, there is no evidence that this was a mutual agreement to end the tenancy early but a request by the landlord for it to end in May not April. I find that the tenant give the landlord notice to end the tenancy on April 03, 2009 when he stated the date he would be ending the tenancy. The *Residential Tenancy Act* s. 45 states

## **Tenant's notice**

**45** (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) 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.

Therefore, Due to the above, I find the landlord is entitled to recover a loss of revenue from the tenant up to the end of the tenancy of August 31, 2009.

In Normal circumstances I would expect a landlord to attempt to re-rent the property to try to mitigate his losses for the remaining months. The tenant claims the landlord did not mitigate his loss by agreeing to allow him to sublet the unit to the tenants' friend. Section 34 of the Act states:

## **Assignment and subletting**

**34** (1) Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.

(2) If a fixed term tenancy agreement is for 6 months or more, the landlord must not unreasonably withhold the consent required under subsection (1).

I find that the tenancy agreement had only four months remaining on it and as the landlord was overseas and unable to interview the proposed tenant to sublet the unit and it would be

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unreasonable to expect the landlord to reduce the rent to \$800.00. I find the landlord is within his rights not to agree to sublet the rental unit for the remainder of the tenancy. I also find the landlord is only claiming a loss of revenue for May and June 2009 and not the remaining months of July and August, 2009. Therefore, I find he is entitled to recover rent for May and June, 2009 from the tenant. I also find the landlord is entitled to keep the tenants security deposit in partial satisfaction of this claim.

As the landlord has been successful with his application he is also entitled to recover the \$50.00 filing fee from the tenant. A Monetary Order has been issued for the following amount.

Loss of revenue for May and June 2009	\$3,200.00
Less security deposit and accrued interest	(-\$804.00)
Total amount due to the landlord	\$2,446.00

## Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for \$2,446.00. The Order must be served on the respondent and is enforceable through the Provincial Court 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: October 13, 2009.

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Dispute Resolution Officer