



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes            MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain a Monetary Order for unpaid rent and compensation for damage or loss under the *Residential Tenancy Act (Act)*, an Order to keep all or part of the security deposit and to recover the cost of the filing fee. This hearing was due to be heard on October 28, 2009 and was adjourned on that date to allow the landlord to serve the tenant by substitute service. An Order was made to this effect and the person named on the substitute service Order was called into the hearing and gave affirmed testimony that she gave the tenant the hearing documents on September 11, 2009. The tenant is deemed to have been served a copy of the hearing documents in accordance with Section 71 of the Act

The landlord appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

- Is the landlord entitled to a Monetary Order for loss of rental income?
- Is the landlord entitled to compensation for damage or loss under the *Act* and if so how much?
- Is the landlord entitled to keep all or part of the security deposit and interest?
- Whether the landlord is entitled to a Monetary Order to recover the unpaid rent and filing fee?



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## Background and Evidence

This tenancy started on November 01, 2008. This was a fixed term tenancy which was due to end on October 31, 2009. The tenant paid rent of \$775.00 per month which was due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$387.50 on October 24, 2008.

The landlord testifies that the tenant gave written notice to end the tenancy on July 07, 2009 to end the tenancy on July 31, 2009. The tenant took part in the move out condition inspection but refused to sign the report as the landlord indicated that she would have to pay \$500.00 for breaking her lease early. The tenancy agreement does state that the landlord will charge the tenant this amount in the event the tenant ends the tenancy before the end of the fixed term.

The landlord testifies that she re-rented the unit again for August 15, 2009 and therefore now only claims a loss of rental revenue from August 01, to Aug 14, 2009 to a sum of \$350.00.

The landlord has requested to keep the tenants security deposit and accrued interest in partial payment of the outstanding amounts and to recover the filing fee of \$50.00 paid for this application.

## Analysis

I find that the landlord is entitled to recover a loss of rental revenue from August 01 to 14, 2009 in the amount of **\$350.00**. RTB Policy Guideline #3 – Claims for Rent and Damages for Loss of Rent states, the damages to which a landlord is entitled is an amount sufficient to compensate the landlord for any loss of rent up to the earliest time the tenant could have legally ended the tenancy. As the fixed term tenancy was due to end on October 31, 2009, the landlord is entitled to recover rent up to the date that the unit is re-rented. The landlord must also show that they have mitigated their losses by taking steps to re-rent the unit. I find the landlord did take appropriate steps to re-rent the unit and as such has mitigated their loss.

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I also find the landlord is entitled to recover **\$500.00** from the tenant because the tenant ended her tenancy before the end of the fixed term. The tenancy agreement signed by the tenant clearly states that if the tenant terminates the fixed term tenancy before the end of the original term (October 31, 2009) the landlord may, at the landlords option, treat this agreement as being at an end. In such an event, the sum of \$500.00 will be paid by the tenant to the landlord as liquidated damages.

I Order the landlord to keep the tenants security deposit and any accrued interest in partial satisfaction of the claim. As the landlord has been successful with her claim she is also entitled to recover the **\$50.00** filing fee paid for this application. A Monetary Order has been issued to the landlord for the following amount:

Loss of rental revenue for August, 2009	\$350.00
Filing fee	\$50.00
Less security deposit and accrued interest	(-\$388.60)
Total amount due to the landlord	\$511.40

## 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 **\$511.40**. 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: December 10, 2009.

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Dispute Resolution Officer