



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for a monetary order for unpaid rent, for a loss of rental income, to recover the filing fee for this proceeding and to keep the Tenant's security deposit and pet damage deposit in partial payment of those amounts.

### Issues(s) to be Decided

1. Are there arrears of rent and if so, how much?
2. Is the Landlord entitled to compensation for a loss of rental income and if so, how much?
3. Is the Landlord entitled to keep the Tenant's security deposit and pet damage deposit?

### Background and Evidence

This fixed term tenancy started on June 1, 2008 and was to expire on August 31, 2009 however it ended on July 20, 2009 when the Tenant moved out. Rent was \$1,200.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit and pet damage deposit of \$600.00 each on June 1, 2008.

Both Parties agree that rent is unpaid for July 2009. The Landlord served the Tenant with a 10 Day Notice to End Tenancy on July 2, 2009. The Landlord claimed that the Tenant moved out without any notice and as a result, he was unable to re-rent the rental unit for August 2009. The Landlord said he put a sign outside the rental property approximately 3 days after the Tenant vacated and also placed advertisements in the local newspaper.

The Tenant claimed that he gave the Landlord verbal notice that he would be ending the tenancy. The Tenant also claimed that the Landlord took no steps to try to re-rent the property in July 2009 and as a result, he doubted that the Landlord tried to re-rent the rental property for August 2009. The Tenant further claimed that he only moved out because he was being harassed by the Landlord but admitted that he did not give the Landlord written notice that he would move out if that conduct did not stop.

## Analysis

I find that there are rent arrears for July 2009 in the amount of \$1,200.00 and award the Landlord that amount.

Section 52 of the Act says that a Notice to End Tenancy (whether given by a Landlord or Tenant) must be in writing. Furthermore, section 45(2) of the Act says that a Tenant of a fixed term tenancy cannot end the tenancy earlier than the date set out in the tenancy agreement as the last day of the tenancy. If a tenant ends a tenancy earlier, they may have to compensate the landlord for a loss of rental income that he incurs as a result.

The Tenant argued that he only left because the Landlord was harassing him. Section 45(3) of the Act says that if a Tenant gives a Landlord written notice that they are in breach of a material term of the tenancy agreement (such as quiet enjoyment, for example) and the Landlord does not rectify the situation within a reasonable period of time, the Tenant may end the tenancy without further notice. In this case, however, I find that the Tenant did not give the Landlord written notice that he would end the tenancy if the Landlord did not amend his conduct. Consequently, I find that the Tenant was not relieved of the requirement to give written notice he was ending the tenancy.

RTB Policy Guideline #3 – Claims for Rent and Damages for Loss of Rent states that a Landlord may elect to end a tenancy and sue the tenant for loss of rent. 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 (which in this case would be August 31, 2009). However, section 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income.

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that he took reasonable steps to re-rent the rental property as soon as possible. This means that if the Landlord's evidence is contradicted by the Tenant, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. The Landlord did not provide any evidence to support his claim that he advertised the rental unit to try to re-rent it for August 2009. In the absence of any corroborating evidence, I find that the Landlord has not provided sufficient evidence to show that he took reasonable steps to minimize a loss of rental income and as a result, that part of his claim is dismissed without leave to reapply.

As the Landlord has only been partially successful on his application, I find that he is entitled to recover one-half of the filing fee for this proceeding or \$25.00. I order the



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Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit and pet damage deposit plus accrued interest in payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as follows:

July 2009 rent:	\$1,200.00
Filing Fee:	<u>\$25.00</u>
Subtotal:	\$1,225.00
Less: Security deposit:	(\$600.00)
Pet deposit:	(\$600.00)
Accrued interest:	<u>(\$10.52)</u>
Balance owing:	\$14.48

## Conclusion

A monetary order in the amount of **\$14.48** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) 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: December 08, 2009.

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Dispute Resolution Officer