



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **Decision**

**Dispute Codes:** MNR, MNSD, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for rent owed for May 2010 based on a fixed term tenancy , reimbursement for water and sewer utility charges assessed by the municipality for 19 months during the tenancy, a late fee owed under the tenancy agreement, reimbursement of a monetary award for the security deposit and interest previously granted to the tenant at a prior hearing, postage and legal costs incurred for the previous hearing. The total claim was for \$4,057.65.

Both parties appeared and gave testimony.

### **Issue(s) to be Decided**

The issue to be determined, based on the testimony and evidence, is whether or not the landlord is entitled to monetary compensation for rent or loss of rent and whether or not the landlord is entitled to compensation for damages and other losses.

### **Background and Evidence**

The tenancy began on September 1, 2008 as a fixed term that was extended to May 31, 2010 as the expiry date. The rent was \$2,300.00 per month. The parties both testified that the tenancy was ended early by the tenant who gave verbal notice in February 2010 that she would be vacating by the end of March 2010. The tenant moved out on March 21, 2010. The tenant paid the rent for March and April 2010 in full.

However, the tenant did not pay rent for the month of May 2010 and the landlord is claiming \$2,300.00 compensation for the tenant's violation of the fixed term tenancy agreement. According to the landlord, after the tenant gave verbal notice, a decision was made to place the property for sale. The landlord stated that, while the unit was vacant for the month of April 2010, it was being shown to potential purchasers and was eventually sold on May 10, 2010 with a completion date of May 26, 2010. The landlord stated that, although he did not advertise for a new renter during March or April 2010, he did scan the newspaper checking to see if there were any ads placed there by tenants seeking a short-term rental in order to mitigate losses stemming from the

premature ending of the fixed-term tenancy. The landlord testified that he was not successful in locating a tenant through this method and the home was sold with a closing date set for the end of May 2010. The landlord's position was that because the tenant had ended the tenancy early and the landlord was not able to find a replacement renter, a loss of rent for the month of May was incurred in the amount of \$2,300.00 and compensation from the tenant in this amount was warranted.

The tenant testified that the landlord had never shown the unit to any potential renters during March after she gave her notice and had never mentioned that he wanted the unit to be sublet to new occupants. The tenant stated that it was not until she had already vacated and discovered the landlord had cashed her rental cheque for April that the tenant realized that she could have pursued subletting the unit. The tenant stated that, because the landlord was only showing the unit to potential buyers, she had presumed that he preferred the unit to be vacant for these showings. The tenant stated that the landlord had access to take renters through the unit from the month of March onward and was at liberty to re-rent the unit as early as March 21, but made no effort to do so. The tenant pointed out that the landlord had already been compensated for one month for April during which the unit was completely vacant and was available to be shown to renters. The tenant did not agree with the landlord's claim that he was entitled to an additional \$2,300.00 for loss of rent for the month of May 2010.

The landlord testified that the rental agreement signed by the tenant clearly indicated that utilities, including water and sewer charges were not included in the rent. The landlord acknowledged that, unlike the hydro or other utilities, which the tenant had to put in her name, it was necessary that the water and sewer charges had to be made directly to the landlord who was billed in his name by the municipality. The landlord submitted copies of the invoices from the municipality addressed to the landlord. The landlord testified that in early 2009, when the first invoice came due in the amount of \$151.75 the landlord contacted the tenant and verbally advised that she must pay for the charges as agreed upon in the tenancy agreement. The landlord testified that the tenant refused to pay for the water and sewer charges, insisting that these items were not the tenant's responsibility. The landlord stated that no written demand for payment of this bill was ever issued.

With respect to the subsequent utility invoices, the landlord testified that he did not discuss these with the tenant verbally nor issue a written demand for payment. The landlord stated that the parties merely "agreed to disagree" and the landlord intended to eventually have the outstanding arrears in utilities satisfied by deducting the accrued charges from the security deposit at the end of the tenancy at some time in the future. The landlord felt that the tenant had been issued a written demand for payment by virtue of the fact that water and sewage was shown as a clear term in the tenancy

agreement not to be included in rent. The landlord is now seeking accrued arrears of \$842.65 for unpaid water and sewer utility charges assessed by the municipality over the 19 months during the tenancy.

The tenant testified that, despite the fact that there was no mark beside “water” and “sewage disposal” on the tenancy agreement to indicate they were *included* in the tenancy, she believed from the outset that these charges would fall within the landlord’s responsibility under the agreement. The tenant testified that in the lease “*Lessor’s Covenants*” in paragraph 5.3 required the landlord: “*To pay property taxes, and local or other assessments levied by any governmental authority on the Premises.*” The tenant stated that she had contacted the landlord’s agent about this matter near the start of the tenancy and was assured at that time that the tenant was not required to pay water and sewer charges under the contract. The tenant pointed out that other items included in the rent were also not marked off on the tenancy agreement.

The tenant testified that the landlord had never brought up compensation for water or sewer charges again after their initial discussion and she believed that the matter was completely resolved. The tenant stated that she had never seen been issued with a written demand for payment nor any invoices for water and sewer charges until she received the landlord’s evidence for the hearing.

The landlord was also seeking \$25.00 late fee owed under the tenancy agreement, the reimbursement for the \$850.00 representing double the security deposit previously granted to the tenant at a prior hearing, the \$5.75 interest applicable to the security deposit, \$22.31 postage and \$570.00 legal costs incurred for the previous hearing. The tenant disputed the landlord’s entitlement for these costs.

The landlord’s total claim was for \$4,057.65.

### **.Analysis**

With regard to the landlord’s claims for loss of rent for May 2010, I find that an applicant’s right to claim damages from another party is dealt with in section 7 of the Act which provides that if a party fails to comply with the Act or agreement, the non-complying party must compensate the other for any damage or loss that results. It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

#### **Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,

2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage

I find the tenant did violate the Act and the agreement by prematurely terminating the tenancy as of the end of March 2010, two months prior to the expiry date of May 31, 2010. I find that, although the landlord was fully compensated for the month of April 2010 after the tenancy agreement was terminated, he did suffer a loss of rent for May in the amount of \$2,300.00. In this regard, I find that the claim has satisfied elements 1, 2 and 3 of the test for damages. However, in regard to meeting the criteria of element 4 of the test, I find that the landlord was still required to mitigate the loss by making a genuine effort starting during the last week of March 2010 seeking a tenant to occupy the unit for the months of April and May 2010 or any partial month.

While it is understandable that re-renting a unit that is also being shown for sale would be challenging, I find that a reasonable attempt to find a new renter beginning as soon as the landlord knew the tenant was going to vacate should have been pursued to comply with section 7(2) of the Act. I find that the landlord's action in merely searching existing advertisement for renters looking for a short-term lease, would not qualify as reasonable effort. I find that taking reasonable steps would include the landlord advertising the vacancy and in the absence of this, there is no way to know if all or part of the damage/loss could have been successfully mitigated. Given the above, I find that the landlord's claim for compensation for the loss of rent for May must be dismissed.

With respect to who was responsible under the tenancy agreement to pay the water and sewer charges, I find that, despite the term cited by the tenant in which the landlord was to be responsible for municipal tax and other assessment, the contract clearly does not include charges for water and sewer as part of the rent.

However, I find that there were no instructions within the tenancy agreement regarding how and when these utility payments must be made by the tenant to the landlord. I find that the accounts in question were in the landlord's name and the tenant would rely on the landlord to administer the payments, including forwarding copies of the invoices to the tenant when they arrived to confirm that she must make a payment.

I find that section 46(6) of the Act states that a notice for arrears based on utilities can only be issued if a tenancy agreement requires the tenant to *pay utility charges to the landlord*, and if they remain *unpaid more than 30 days after the tenant receives a written*

*demand for payment.* (my emphasis). I find that the charges of \$842.65 were permitted to continue to accrue over 19 months of the tenancy, without the landlord ever issuing a written demand or any notice. I find that the landlord, being fully aware from the outset that the tenant did not agree with the landlord's interpretation of this part of the tenancy agreement, chose not to challenge the tenant's position nor take any action to enforce the disputed term of the agreement. Accordingly I find that the portion of the landlord's claim for the \$842.65 water and sewer charges failed to satisfy element 4 of the test for damages and must be dismissed.

With respect to the \$25.00 late fee owed under the tenancy agreement, I find that this pertained to a period that fell after the tenancy was ended and therefore the terms of the tenancy agreement would no longer apply. The claim must be dismissed.

In relation to the landlord's claim for reimbursement for the \$850.00 security deposit that had previously been granted to the tenant at a prior hearing and the \$5.75 interest, I find that this matter was already dealt with and a determination made with regard to the status of the security deposit and therefore this portion of the claim must be dismissed.

In regard to the landlord's claim for \$22.31 postage and \$570.00 legal costs, I find that the only recoverable expenditures related to the preparation of a dispute resolution proceeding allowed under the Act would be the filing fees paid by the applicant. I therefore find that the claim for legal and administrative costs, must be dismissed.

As the landlord's application has not succeeded, I find that the landlord is not entitled to be reimbursed for the \$50.00 cost of filing the application.

Given the above, I find that the landlord's application for monetary compensation must be dismissed.

### **Conclusion**

I hereby dismiss the landlord's application in its entirety without leave.

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: February 2011.

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Residential Tenancy Branch