



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and attended by the landlord's agent and the tenant.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for liquidated damages; for 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 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on October 14, 2010 for a 6 month fixed term beginning on November 1, 2010 for a monthly rent of \$495.00 due on the 1<sup>st</sup> of the month with a security deposit of \$247.50 paid.

Both parties agree the tenant moved into the rental unit early and was charged additional rent for the period of October 17 to 31, 2010 and that on October 28, 2010 the tenant informed the landlords' agents that he would be moving out of the rental unit effective October 29, 2010.

The tenant provided a number of concerns that led to his decision to vacate the rental unit including:

1. The unit was infested with spiders and earwigs;
2. The presence of mice in the rental unit;
3. Leaks on the east wall that leaves puddles on the floor;
4. No ventilation or heat source in the shower stall leading to mould problems; and
5. Septic field problems.

The tenant confirmed that he did not report these items to the landlord as he had determined that the required repairs would require him to move out of the rental unit but he felt the landlord would not provide for this. He also felt that he was not obligated to the landlord as the tenancy fixed term had not begun when he gave the landlord his notice to end the tenancy.

The landlords' agent testified that they began advertising the rental unit immediately on their website and in the local paper on the Sunday following the tenant vacating the rental unit. She further stated the unit was rented out for mid January 2011.

The agent also explained that the estimate for the liquidated damages amount is based on the charges the property management company charges the landlord for assessing new tenant applications; running credit and reference checks; preparing the unit for rental; advertising and check in services.

### Analysis

Section 16 of the *Act* states the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the agreement is entered into, regardless if the tenant ever occupies the rental unit.

In this case, I find that because the parties had entered into a written tenancy agreement and a security deposit had been paid the tenant was obligated to end the fixed term tenancy in compliance with the *Act*.

Section 45 allows a tenant to end a fixed term tenancy earlier than the end of the fixed term if the landlord has breached a material term of the tenancy; the tenant has provided written notice to the landlord to correct the breach; and the landlord has failed to correct the breach within a reasonable time.

Based on the testimony and evidence of both parties the tenant failed to notify the landlords of any deficiencies in the rental unit or residential property and did not provide any opportunity for the landlord to correct any problems and therefore was non-compliant with Section 45 of the *Act* to end the tenancy.

As such, I find the tenant is responsible for the payment of rent until such time as the landlord was able to re-rent the unit and I accept that the landlord took reasonable steps to mitigate any losses. In addition, I find the landlord has established the value of liquidated damages to be a true estimate of the costs associated with re-renting the rental unit.

### Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,785.00** comprised of \$1,160.00 rent owed; \$575.00 liquidated damages and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$247.50 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,510.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) 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: March 15, 2011.

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Residential Tenancy Branch