



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This conference call hearing was convened in response to the landlord's application for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

In her documentary evidence, the landlord submitted a statement of claim dated March 10<sup>th</sup>, 2011 of \$10,485.00. In her application for dispute resolution which was filed on November 22<sup>nd</sup>, 2010 the landlord made a claim of \$5,000.00 for the loss of rent for October and November 2010. The landlord did not submit an amended application for dispute resolution and the evidence that I considered was based on the monetary claim that the landlord made on her original application.

### Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to recover the filing fee?

### Background and Evidence

Pursuant to a written agreement, the fixed term tenancy was based on a one year lease starting on August 1<sup>st</sup>, 2010. The monthly rent of \$1500.00 was payable on the first of each month. The tenant paid a security deposit in the amount of \$750.00. The landlord served the tenant a 10 Day Notice to End Tenancy effective September 12<sup>th</sup>, 2010, and the tenancy ended on September 30<sup>th</sup>, 2010. The landlord applied for an Order of Possession and on October 18<sup>th</sup>, 2010, she was granted an Order of Possession and a Monetary Order for unpaid rent.

At dispute was the correct address of the rental unit. The landlord's application specified that it was the lower unit of a single detached home. The tenant argued that she rented the upper level, that she never lived in the lower portion of the suite, and on that basis that I should not consider her evidence. The landlord did not have a copy of her application however she stated that she may have made a typographical error. In reviewing the landlord's documentary evidence such as the tenancy agreement, advertisements and notices to end tenancy, I find that the tenant did reside in the upper unit. I accept that the landlord's error was inadvertent; I have no evidence of an ulterior motive for this discrepancy, the tenant was not prejudiced by the error and I allowed the landlord to present evidence.

The landlord submitted that she tried to minimize her loss by advertising on Craigslist. In her documentary evidence, the landlord provided copies of the ads. She stated that she advertised as soon as she knew that the tenant was leaving. The ads were dated as early as August 16<sup>th</sup>, 2010 through to March 1<sup>st</sup>, 2011. The landlord stated that she reduced her rent to \$1400.00 and that she has found new tenants starting April 1<sup>st</sup>, 2011. She stated that she also made known the availability of her suite through networking and word of mouth.

The tenant testified although she broke her lease, she had reasons to do so. She stated that since she was evicted she should not have to compensate the landlord for the loss of rental income.

### Analysis

The *Residential Policy Guideline #3* states in part that if the landlord elects to end the tenancy and sue the tenant for loss of rent over the balance of the term of the tenancy, the tenant must be put on notice that the landlord intends to make such a claim, and that this should ideally be done at the time the notice to end the tenancy is given to the tenant. The Guideline also states that the filing of a claim for damages for loss of rent and service of the claim upon the tenant while the tenant remains in possession of the premises is sufficient notice.

The landlord did not put the tenant on notice that she intended to make such a claim; I have reviewed the tenancy agreement and found no clause pertaining to this issue and the landlord's application has been filed well after the tenant was no longer in possession of the rental unit. The landlord applied for and was granted an Order of Possession; she was also awarded a Monetary Order for unpaid rent in the amount of \$1500.00.

Based on the Guideline, I find that having ended the tenancy by serving the tenant with a 10 day notice without notifying the tenant that she intended to claim future rent extinguishes the landlord's entitlement to bring this claim.

Conclusion

The landlord's application is dismissed.

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 22, 2011.

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Residential Tenancy Branch