



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **Decision**

### **Dispute Codes:**

MNDC , MNR, MNSD, FF

### **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the landlord for a monetary order for money owed or compensation for damage or loss under the Residential Tenancy Act, (the Act), and an order to retain the security deposit in partial satisfaction of the claim.

Both the landlord and tenants were present and each gave testimony in turn.

### **Preliminary Matter**

The landlord sought to amend the amount of the monetary claim to include losses incurred after the application was filed. The original application sought compensation for loss of one-month rent for the month of December 2010. However, the landlord testified that due to the unit remaining vacant, the landlord suffered an additional loss of rent for January 2011 and February 2011. However, I find that the application cannot be amended at this point as it would prejudice the respondent who had no notice of such a claim. The landlord should have amended the claim prior to this hearing and served notice on the other party as required.

### **Background and Evidence**

The tenancy began on July 1, 2010 for a fixed term ending on June 30, 2011. The rent was \$1,050.00 and the tenant paid a deposit of \$525.00. The landlord testified that the tenant vacated at the end of November prior to the expiry date of the fixed term. The landlord testified that efforts were made to find a new tenant by advertising on the corporate website, posting a vacancy sign and advertising on free internet sites. The landlord stated that they have an employee dedicated to marketing vacant units. Despite the landlord's efforts to mitigate, the unit remained vacant. The landlord was claiming the loss of \$1,050.00 rent for the month of December 2010 and \$525.00 liquidated damages under the tenancy agreement.

The tenant acknowledged that they had moved out prior to the expiry of the fixed term, but testified that an attempt was made by the tenant to find a new renter to sublet. The

tenant 's position was that the landlord's efforts to re-rent were not adequate and that the liquidated damages clause in the tenancy agreement that the tenant initialed was exorbitant and constituted a penalty.

### **Analysis**

In regards to an applicant's right to claim damages from another party, Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and order payment in such circumstances.

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

The burden of proof is on the claimant, that being the landlord, to prove the existence and value of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the tenant. Finally it must be proven that the claimant took reasonable steps to mitigate losses that were incurred.

In this instance I find that the tenant violated the agreement by terminating the tenancy before the expiry date of the fixed term. I find that the tenant's violation did genuinely result in a loss to the landlord. I find that the landlord met its obligation to minimize the loss by taking reasonable measures to re-rent the unit. Therefore, I find that the landlord's is entitled to be compensated for \$1,050.00 for the loss of rent for the month of December 2010.

With respect to the liquidated damages, I find that this claim relates solely to a term in the tenancy agreement, that the landlord seeks to have enforced. Section 58(1) states that a person may make an application to the director for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:

- (a) rights, obligations and prohibitions under this Act;

(b) rights and obligations under the terms of a tenancy agreement that

- (i) are required or prohibited under this Act, or
- (ii) relate to (A) the tenant's use, occupation or maintenance of the rental unit, or; (B) the use of common areas or services or facilities. (my emphasis)

In regard to the amount of the liquidated damages being the equivalent of one half a month rent, of \$525.00, I find that this is a valid term in the tenancy agreement that the parties both agreed to. I find that the amount is based on genuine estimated administrative costs of re-renting and therefore does not constitute a penalty. I find that there is no justifiable reason not to enforce this tenancy term and I find the landlord is entitled to be compensated in the amount of \$525.00.

### **Conclusion**

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to monetary compensation of \$1,625.00 comprised of \$1,075.00 loss of rent, \$525.00 liquidated damages and the \$50.00 fee paid by the landlord for this application.

I order that the landlord retain the tenant's security deposit of \$525.00 in partial satisfaction of the claim and issue a monetary order for the remaining \$1,100.00 to the landlord. This order must be served on the Respondent 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: April 2011.

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Residential Tenancy Branch