



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPB, MNR, MNDC, MNSD, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution for a monetary order for unpaid rent, to keep all or part of the security deposit, for an order of possession, for a monetary order for money owed or compensation for damage or loss, and to recover the filing fee for the Application.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to and make submissions to me.

### **Preliminary Issue:**

The landlord applied for an order of possession due to an alleged breach of an agreement; however the tenancy ended on January 1, 2011. Thus the landlord's application for an order of possession apparently was in error. I therefore proceeded based upon the monetary issues only.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary compensation sought under section 38, 67 and 72 of the Residential Tenancy Act (the "Act")?

### Background and Evidence

The testimony and evidence indicates that this 8 month, fixed term tenancy began on September 1, 2010, ended on January 1, 2011, when the tenant vacated the rental unit, monthly rent was \$1,550.00 and the tenant paid a security deposit in the amount of \$775.00 at the beginning of the tenancy.

The tenant previously filed for dispute resolution, which resulted in the tenant being granted a monetary order in the amount of \$1,600.00, for the return of her security deposit, doubled, and recovery of the filing fee.

The monetary order was issued May 31, 2011, and the landlord acknowledged that he has not paid the monetary order.

The landlord's claim is for \$1,600.00, for loss of rent for January 2011, and the filing fee.

Although the landlord testified that he filed evidence in the form of a tenancy agreement, I have no evidence from the landlord before me. The landlord could not provide clear testimony as to when any evidence was filed.

The landlord submitted that due to the tenant breaking the fixed term lease early, he suffered a loss of rental income for January 2011.

Upon query, the landlord submitted that he did begin advertising the rental unit shortly after receiving the tenant's notice to vacate on November 29, 2010, but was unsuccessful in so doing until February 2011.

The landlord submitted that he was not able to advertise the rental unit for a large part of December due to a previously scheduled family holiday.

The tenant responded that she attempted to assist the landlord in re-renting the rental unit, but that she never heard from the landlord. The tenant further submitted that the landlord failed to mitigate his alleged loss due to being away for much of the month of December 2010.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the landlord in this case, has to prove four different elements:

**First**, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to

repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

In the absence of proof by the landlord that the rental unit remained vacant during all or part of January 2011, and thereby incurring a loss, or to verify that the landlord advertised the rental unit, I find that the landlord submitted insufficient evidence to prove steps 1 and 4 in the test for damage and loss. With the lack of evidence, I cannot determine that the landlord made reasonable attempts to minimize his loss.

I also dismiss the landlord's request to retain the security deposit as the landlord had fifteen days after the end of the tenancy to return the security deposit or file an application to claim against the security deposit, according to section 38 of the Act.

### Conclusion

I therefore **dismiss** the landlord's application, **without leave to reapply**.

As the parties were informed in the hearing, the previously issued monetary order granted to the tenant would not be impacted by this Decision and would remain in full force and effect.

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: September 28, 2011.

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Residential Tenancy Branch