



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

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

Three hearings were conducted via teleconference and the landlord attended all three hearings; the tenant attended only the third hearing.

The landlord filed her Application for Dispute Resolution on April 18, 2011. On May 2, 2011 the tenant's bankruptcy trustee submitted a letter to the Residential Tenancy Branch (RTB) directing the RTB, as creditor, to suspend all proceedings against the tenant.

On August 4, 2011 RTB administrative staff contacted the tenant's trustee by leaving a voice message and sending an email to advise the trustee that the RTB could not suspend proceedings unilaterally; that the hearing would proceed; and that the trustee must attend the hearing to deal with the issues to suspend the hearing as a preliminary matter.

Neither the trustee nor tenant attended the hearing of August 5, 2011. With the landlord's consent, at that time, the hearing was adjourned to be reconvened on August 22, 2011. Neither the trustee nor tenant attended the hearing of August 22, 2011; the landlord agreed to another adjournment.

At the hearing conducted on September 9, 2011 the landlord and tenant attended but the trustee did not. In the absence of the trustee, I find there are no reasons before me that prevent me from hearing this dispute. I note that these matters could have been dealt with at the original or the first reconvened hearing had the trustee attended or sent the tenant at that time preventing the delays in resolving the landlord's application.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for lost revenue; for damage; 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 37, 38, 44, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord provided a copy of a tenancy agreement signed by both parties on August 4, 2010 for a fixed term tenancy beginning on August 1, 2010 with the length of the term identified as “annually” with a monthly rent of \$1,400.00 due on the 1<sup>st</sup> of each month and a security deposit of \$700.00 was paid on August 15, 2010.

The tenant pointed out that by using the term “annually” as the length of time for the fixed term the tenancy agreement is unclear in relation to the length of the term. The tenant stated that she did believe, at the time she signed the tenancy agreement, the intention was for a 1 year term.

The landlord testified that the tenant had to end the tenancy effective March 31, 2011 and that since she was given notice by the tenant she had been unable to rent the unit out until August 1, 2011.

The landlord testified that she had advertised in her workplace and through word of mouth with friends and family; that she advertised online and in the local newspaper. That she had several viewings over the course of several months – on average 2 or 3 days per week until rented. The tenant testified that while she remained in the rental unit in March the landlord did not have many showings.

The landlord went on to testify that in May 2011 she lowered the advertised price to \$1,300.00 and then when unsuccessful with this she further lowered it to \$1,200.00 for a single or couple and \$1,300.00 for a small family. The landlord described the rental unit as a small (900 sq. ft.) 2 bedroom and den.

The landlord seeks the equivalent of rent for the 4 months of the tenancy remaining after the tenant vacated the rental unit in the amount of \$5,600.00. The landlord also seeks advertising costs in the amount of \$127.94 (print and online) and for the replacement of a barstool in the amount of \$88.48.

The tenant testified that she did not dispute any of the amounts present by the landlord or that she owed the landlord for any of the items claimed.

### Analysis

To be successful in a claim for compensation for damages or loss the applicant must provide sufficient evidence to establish the following 4 points:

1. That a loss or damage exists;
2. That the loss or damage results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. The steps taken, if any, to mitigate the damage or loss.

I accept, based on the testimony of both parties that the tenant ended the tenancy 4 months prior to the end of the fixed term, in breach of the tenancy agreement. I accept the landlord took reasonable steps to mitigate any lost income from the rental unit by advertising the rental unit sufficiently and by lowering the amount of rent requested to an effort to rent the unit when she had difficulty renting the unit as advertised.

I accept the costs associated with the advertising of the rental unit are also costs resulting from the tenant's breach of the tenancy agreement and the landlord is entitled to recovery of those costs as claimed. In the absence of any disagreement from the tenant for the replacement of the bar stool, I find the landlord is also entitled to the amount claimed.

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$5,916.42** comprised of \$5,600.00 lost income; \$127.94 advertising costs; \$88.48 barstool replacement; and the \$100.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$700.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$5,216.42**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: September 12, 2011.

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Residential Tenancy Branch