



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, O

### Introduction

This hearing dealt with a claim by the landlord for a monetary order. Both parties participated in the conference call hearing.

### Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The facts are not in dispute. On or about July 11, 2011, the parties entered into a written tenancy agreement which set a fixed term for the tenancy, beginning on September 1, 2011 and ending on March 31, 2012. The tenant had paid a \$784.50 security deposit and a \$784.50 pet deposit and had paid rent for both September 2011 and March 2012 in advance. Rent was set at \$1,569.00 per month and the tenant was required to pay utilities. On September 7, the tenant gave the landlord written notice that she was ending the tenancy the same day.

The landlord seeks to recover \$137.30 in unpaid utilities and loss of income for the months of September and October and half the month of November. The landlord was able to re-rent the unit for November 15. He testified that upon receiving the tenant's notice, he immediately began advertising, placing advertisements in the local newspapers and online. The tenant claimed that the advertisements gave insufficient detail to attract potential tenants.

### Analysis

Although the parties entered into a fixed term rental agreement obligating the tenant to pay rent each month until March 31, 2012, there are certain circumstances under which the tenant could have been released from that obligation. If the rental unit were not inhabitable, the tenant could not be held to the agreement as the landlord had utterly failed to meet his obligation under the agreement. However, there is no evidence

before me proving that the rental unit was uninhabitable. The only other means by which the tenant could have ended the fixed term early is found in section 45(3) of the Act. The tenant could have notified the landlord in writing that he had breached a material term of the tenancy and if he failed to correct the breach within a reasonable time, the tenant could have given written notice to end the tenancy early. The evidence shows that the tenant did not follow this procedure.

I find that the tenant did not have a legal basis on which to end the tenancy early and I find that the landlord suffered a loss of income as a result. I find that the landlord acted reasonably to minimize his losses and I find that the advertisements he placed provided adequate detail to pique the interest of prospective tenants. As the landlord was paid for the month of September and also had been paid for the last month of the tenancy, I find he lost just half of one month's rent for the period from November 1-15 and I award him \$784.50.

Although the rental unit was unoccupied for several months, there were still utility charges for that period as the base service charges were still assessed and a minimal amount of heat was required. I find that as the tenant was responsible for utility payments pursuant to the terms of the tenancy agreement, she is liable for the cost of utilities during those unoccupied months. I award the landlord \$137.30.

I also award the landlord \$50.00 which represents the filing fee paid to bring this application.

### Conclusion

The landlord has been awarded a total of \$971.80 and I grant him a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court 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: December 12, 2011

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Residential Tenancy Branch