



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes** MNDC, FF

### **Introduction**

This matter dealt with an application by the Landlord for compensation for a loss of rental income and to recover the filing fee for this proceeding.

### **Issue(s) to be Decided**

1. Is the Landlord entitled to compensation for a loss of rental income?
2. Is the Landlord entitled to recover from the Tenant the filing fee he paid for the proceeding?

### **Background and Evidence**

This fixed term tenancy started on July 11, 2011 and expires on August 31, 2012. Rent is \$830.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Landlord said that on January 3, 2012, he received written notice from the Tenant that he would be ending the tenancy on January 20, 2012. The Landlord said he advised the Tenant that he could not end the fixed term early but he could sublet the rental unit if he wished. The Landlord said the Tenant later withdrew his notice and the tenancy has continued.

The Landlord said although he has not incurred a loss of rental income, he incurred the expense of the filing fee because the Tenant gave him notice to end the fixed term early. The Tenant argued that it was the Landlord's choice to file an application for dispute resolution.

### **Analysis**

Based on the evidence of both Parties, I find that the Landlord has not lost any rental income and that part of his application is dismissed with leave to reapply. The Landlord said at the hearing that he believed the Tenant was not entitled to end a fixed term tenancy early and that was why he applied for compensation for rent for the unexpired term of the tenancy (or for 7 months). However, I find that this belief is not completely accurate.

Section 45(2) of the Act says that a tenant of a fixed term tenancy cannot end the tenancy earlier than (one clear month prior to) the date set out in the tenancy agreement as the last day of the tenancy. If a tenant ends a tenancy earlier, they may have to compensate the landlord for a loss of rental income that he incurs as a result. However, section 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. ***This means that a Landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income.***

In other words, a Tenant may be responsible for a loss of rental income if they end a fixed term tenancy early. However, in order for a Landlord to be granted compensation for a loss of rental income, the Landlord must first demonstrate that they made reasonable attempts to re-rent the rental unit as soon as possible. If a Landlord does not make sufficient effort to re-rent a rental unit as soon as they receive a Tenant's ***written notice***, the Landlord may not be entitled to recover compensation for a loss of rental income due to their failure to mitigate their losses.

The Landlord argued that he incurred the filing fee for this proceeding only because the Tenant gave him notice ending the tenancy early. I find that the Tenant gave the Landlord written notice on January 3, 2012 and that the Landlord filed his application for dispute resolution later the same day. Consequently, I conclude that the Landlord filed his application before he made any efforts to mitigate his losses and before he knew if he would incur any loss of rental income. In other words, I find that the Landlord filed his application prematurely because he was under the mistaken belief that the Tenant would automatically be liable for rent for the unexpired term of the tenancy. I find that in those circumstances, it would not be appropriate to make the Tenant bear the cost of the filing fee paid by the Landlord for that application.

### **Conclusion**

The Landlord's application for a loss of rental income is dismissed with leave to reapply. The Landlord's application to recover the filing fee for this proceeding is dismissed without leave to reapply.

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 26, 2012.

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Residential Tenancy Branch