



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent or rental income loss, compensation for damage and loss under the Residential Tenancy Act (the "Act"), regulation or tenancy agreement and recovery of the filing fee.

The Landlord testified that they served the Tenant, by registered mail with the Application for Dispute Resolution and Notice of Hearing on January 20, 2012, and provided the tracking information from the Canada Post receipt. I find that the Tenant was served the Application and Notice of Hearing in accordance with section 89 of the Act.

The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to a monetary order for unpaid rent or rental income loss, compensation for damage and loss under the Act, regulation or tenancy agreement and recovery of the filing fee?

### Background and Evidence

The Landlord testified that the Tenant signed the tenancy agreement on October 10, 2011 with the Landlord for a move in date of November 01, 2011. The tenancy agreement is for a one year fixed term ending October 31, 2012. The Landlord provided a copy of the signed tenancy agreement into evidence, which has the Tenant's name and signature. The tenancy agreement states that the rent is due on the first day of the month in the amount of \$1,300.00.

The Landlord stated that the Tenant agreed to provide a security deposit and post-dated rent cheques after signing the tenancy agreement on October 10, 2011 as she had no

cheques with her when she signed the agreement. The Landlord stated that she agreed to meet the Tenant later in the day on October 10, 2011 to pick up the cheques from her directly. The Landlord stated that when she contacted the Tenant, the Tenant told her that she had changed her mind and wanted to cancel the tenancy agreement she had signed. The Landlord stated that she had already cancelled the rest of her showings that day and turned away two other prospective tenants. The Landlord stated that as a result of this Tenant breaking the tenancy agreement she lost rental income for a month and a half before obtaining new tenants. The Landlord stated that she advertised and showed the place to prospective tenants, but it was not until November 22, 2011 that new tenants signed a tenancy agreement and agreed to rent the unit for December 15, 2011. The Landlord provided a copy of their advertising into evidence and a copy of the new tenants' tenancy agreement.

The Landlord stated that she contacted the Tenant to explain her concerns about the breach of the tenancy agreement and requested her address. The Landlord stated that the Tenant provided her the address. The Landlord filed for dispute resolution on January 20, 2012 and sent the application and Notice of hearing package to the Tenant by registered mail on the same date.

The Landlord is claiming \$1,300.00 in rent for November 2011 and \$650.00 for half a month's unpaid rent/rental income loss for December 2011 due to the Tenant breaking the fixed term tenancy agreement in contravention of the Act.

The Landlord is requesting a monetary order of \$1,950.00 and \$50.00 for the filing fee for this Application.

### Analysis

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

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 26 of the Act requires a tenant to pay rent when it is due under the tenancy agreement. In this case, the tenancy agreement between these parties is that rent is due on the first of the month. The Tenant signed a fixed term tenancy agreement with

the Landlord which was not due to end until October 31, 2012. The Tenant failed to pay rent as required by the tenancy agreement. As a result, I find that the Tenant breached the tenancy agreement and ended the tenancy prior to the fixed term end date. I accept the Landlord's evidence that they began to look for a new tenant immediately after the Tenant advised them on the afternoon of October 10, 2011 that she would not be moving into the rental unit. I am satisfied with the evidence that the Landlord was not able to find new tenants to rent the unit until December 15, 2011, and that they attempted to mitigate or minimize their losses by advertising for a new tenant within a reasonable period of time. I find that the Landlord is entitled to loss of rental income of **\$1,950.00** representing rent for the month of November 2011 and half of December 2011.

Section 72 of the Act specifies that the filing fee can be awarded as determined by the Dispute Resolution Officer. As the Landlord has in part succeeded in their Application, I find that the Landlord is entitled to recover the **\$50.00** fee for this proceeding. This brings the total amount the Landlord is entitled to **\$2,000.00**.

### Conclusion

I grant the Landlord's claim for unpaid rent/rental income loss, compensation for damage or loss and the filing fee. I find that the Landlord is entitled to a monetary order in the amount of **\$2,000.00**.

The order accompanies the Landlord's copy of this decision. The order must be served on the Tenant and may be filed in the Supreme 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 03, 2012.

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Residential Tenancy Branch