



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened in response to an application filed by the landlord seeking a monetary Order, an Order to be allowed to retain the security and pet deposits and an Order to recover the filing fee paid for this application.

Both parties appeared at the hearing of this matter and gave evidence under oath.

### Issue(s) to be Decided

Has the landlord met the burden of proving his claims.

### Background and Evidence

The landlord testified that the parties entered into a fixed term tenancy agreement commencing April 15, 2012 and set to end on April 30, 2013. In spite of this agreement the landlord says that on July 24, 2012 the tenant sent him an email advising that he intended to vacate the rental unit at the end of August. The landlord says the tenant vacated the rental unit on or about August 31, 2012. The landlord says that despite placing advertisements on Craigslist and Kijiji he has been unable to re-rent the premises and it remains vacant to date. The landlord is seeking compensation of \$18,000.00 representing 8 months of rental loss for the period September 1, 2012 to April 30, 2013.

The tenant, represented by his agent, testified that the tenant checked Craigslist and saw no advertisements whatsoever for the rental unit. The tenant also submits that she has information that the landlord actually raised the rent he is requesting.

The landlord says he has advertised the rental unit and he has shown it to many prospective tenants but he has been unsuccessful in re-renting the premises. The landlord says that he is asking the same amount of rent as he always has and that it is a reasonable sum and the same or lower than other similar rentals in the neighbourhood,.

### Analysis

Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim where such a claim can be substantiated. In this case the evidence shows that the landlord became aware on July 24, 2012 that the tenant intended to vacate the rental unit on August 31, 2012 instead of April 30, 2013 as agreed in the fixed term tenancy agreement.

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed. The arbitrator may require evidence such as receipts and estimates for repairs or advertising receipts to prove mitigation. In this case the landlord has supplied oral testimony that he advertised the rental unit in Craigslist and Kijiji but the tenant says that they saw no such advertisements and the landlord has failed to provide documentary evidence of the advertisements.

If the arbitrator finds that the party claiming damages has not minimized the loss, the arbitrator may award a reduced claim that is adjusted for the amount that might have been saved.

In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent in this case the landlord testified that he has kept the rent at the sum set during this tenancy and he has not taken any steps to alter the rent which might help to secure a new tenant.

Overall, based on the lack of documentary evidence of mitigation having been supplied by the landlord to support his oral testimony I am not satisfied that the landlord has mitigated his damages to warrant an award in the sum sought. Further, it is now November 2012 yet the landlord is seeking loss of revenue up to and including April 2013 prior to which time he may well find a new tenant. Given this, I will not allow a claim for loss of rental income for the period November to April, however, because the

evidence shows that the tenant did break a fixed term lease I will allow the landlord a monetary award inclusive of the filing fee in the sum of \$2,250.00 which is the sum held by the landlord in the form of pet and security deposits paid by the tenant.

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: November 14, 2012.

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Residential Tenancy Branch