



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MNSD, MNDC, MNR, FF*

### **Introduction,**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act*, for a monetary order for loss of income, cost of advertising, the filing fee and to retain the security deposit in partial satisfaction of her claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Is the landlord entitled to a monetary order for loss of income, cost of advertising and the filing fee? Is the landlord entitled to retain the security deposit?

### **Background and Evidence**

The tenancy started on August 01, 2012 for a fixed term of one year. Rent was \$1,850.00 due on the first day of each month. Prior to moving in the tenant paid a security deposit of \$925.00.

The tenant stated that on August 14, 2012, he gave the landlord notice to end the tenancy effective immediately. The tenant stated that the reason for the notice was that his personal belongings were stolen from the rental unit.

The landlord stated that she started advertising for a new tenant on August 24, 2012. The landlord provided printouts of advertisements on a popular website for postings dated August 24, September 21, October 26 and November 27. The landlord reduced the rent by a \$100.00. In addition, the landlord placed three advertisements in the local newspaper in September and October.

Despite advertising and lowering the rent, the suite remains vacant for four months after the tenant moved out. The landlord also stated that the unit was vacant for three months prior to the tenant moving in. The landlord stated that she attributes this inability to re rent the unit, to the seasonal needs of renters. She stated that units rent in summer and due to the approaching holidays it is unlikely that she will find a tenant before January 2013.

The landlord is claiming rent for the months of vacancy, the cost of advertising, the cost of changing the utility bill to her name and the filing fee. The landlord has capped her claim at \$5,000.00.

### **Analysis**

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month that rent is payable under the tenancy agreement.

By ending the tenancy prior to the end date of the fixed term, the tenant breached the agreement and therefore the landlord is entitled to damages in an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement.

As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenancy could legally have ended the tenancy. In all cases, the landlord's claim is subject to the statutory duty to mitigate the loss by making attempts to re-rent the unit.

Section 7(2) of the *Residential Tenancy Act*, states that a landlord who claims compensation for loss that results from the tenant's non compliance with the tenancy agreement must do whatever is reasonable to minimize the loss.

Based on the testimony of both parties, I find that the tenant gave notice on August 14, 2012. The landlord started advertising on August 24, 2012 and continued to advertise regularly without success. The landlord also lowered the rent by \$100.00. Therefore I find that the landlord made sufficient attempts to re rent the unit.

The landlord also informed me that the unit was vacant for three months prior to the start of this tenancy. The reason for the prolonged vacancies was cited as seasonal by the landlord. However, if the reason for vacancies is seasonal then it does not explain the three month vacancy prior to the start of this tenancy

Based on the date of the tenant's notice to end tenancy, I find that the tenant is responsible for rent for September 2012. Even though the tenancy was a fixed term tenancy, I find that the tenant is not responsible for the rent beyond September because based on the rental history of this unit, I find that on a balance of probabilities, it is more likely than not that there are other factors that prevent the re renting of this rental unit.

However, I find that the tenant is responsible for the cost of advertising in the total amount of \$131.59. The landlord must bear the cost of putting the utilities in her name which is the cost of doing business as a landlord. Since the landlord has proven her case, she is entitled to the filing fee of \$50.00.

Overall the landlord has established a claim as follows:

1.	Loss of income for September	\$1,850.00
3.	Filing fee	\$50.00
	Total	<b>\$2,031.59</b>

I order that the landlord retain the security deposit of \$925.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$1,106.59. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the landlord a monetary order in the amount of **\$1,106.59**.

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 07, 2012.

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Residential Tenancy Branch