



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, MNR, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for money owed under the Act and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

### Preliminary Issue

At the outset of the hearing the landlord withdrew the claim for utilities. The landlord is at liberty to reapply.

### Issue(s) to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The parties entered into a fixed term tenancy which began on September 1, 2012 and was to expire on June 30, 2013. Rent in the amount of \$4,500.00 was payable on the first of each month. A security deposit of \$2,250.00 was paid by the tenant. The tenant vacated the unit on December 12, 2012. Filed in evidence is a copy of the tenancy agreement.

The landlord claims as follows:

a.	Loss of rent for January and February 2013	\$ 9,000.00
b.	Cost of hiring a property manager to rent unit	\$ 2,250.00
g.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$11,350.00</b>

The landlord testified that the tenant breached the fixed term tenancy agreement by moving from the rental unit in December 2012. The landlord stated as of today's date they have not been able to find a new tenant and they seek to recover loss of rent for January and February 2013, in the amount of \$9,000.00.

The landlord testified that on December 7, 2012, they hired a property manager that specialized in renting high-end homes. The landlord seeks to recover the cost of hiring the property manager in the amount of \$2,250.00. Filed in evidence is a copy the agreement.

The landlord testified that the property manager immediately placed advertisements on several popular websites and they have been running these advertisements consistently since December 7, 2012. The landlord testified the property has been shown to six interested parties and are hopeful to have the unit rent shortly. Filed in evidence are copies of those advertisements.

The tenant testified that he does not believe the tenancy agreement provides a term that he would be responsible for the cost of the landlord hiring a property manager and believes that is the cost of the landlord doing business.

### Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Section 45 of the Residential Tenancy Act states:

*45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*  
*(a) is not earlier than one month after the date the landlord receives the notice,*  
*(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*  
*(c) is the day before the day in the month, or in the other period on which the tenancy is based,*

In this case, the evidence of the parties was the tenant vacated the rental unit during the month December 2012. I find that the tenant has breached section 45 of the Act as the earliest date they could have legally ended the tenancy was June 30, 2013, as stated in the tenancy agreement.

As a result of the tenant not complying with the terms of the tenancy agreement or the Act, I find the landlord suffered a loss of rent for January and February 2013.

Section 7 of the Residential Tenancy Act states:

*7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*  
*(2) A landlord or tenant **who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.***

[Emphasis added.]

In this case, the evidence of the landlord was that they immediately hired a property manager and the property manager commenced advertising the rental unit on several popular websites and those advertisements has been running on a regular basis. The advertisements filed as evidence supports the landlord's position that they have made reasonable efforts to have the unit re-rented.

As a result, I find the landlord is entitled to recover unpaid rent for January and February 2013, in the amount of **\$9,000.00**.

The landlord is claiming the cost of employing a property manager, however, there is no provision under the Act, which would require the tenant to pay fees for services of employment. Employment costs are the costs of the landlord due business and the landlord has other mechanism to deduct such a fee. Therefore, the landlord's claim for compensation for the employee fee for the property manager's is dismissed.

I find that the landlord has established a total monetary claim of **\$9,050.00** comprised of the above described amount and the \$50.00 fee paid for this application.

I order that the landlord retain the deposit and interest of **\$2,250.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$6,800.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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 08, 2013

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Residential Tenancy Branch

