



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GM & LM APARTMENTS C/O TPM MANAGEMENT LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Code MNR, MND, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, for compensation for loss and for an order to retain the security deposit in partial satisfaction of the claim.

The landlord's agent attended the hearing. As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were served personally on the tenant at her place of work on January 11, 2013 at 4:45 pm. The tenant did not appear.

I find that the tenant has been duly served in accordance with the Act.

The landlord's agent appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

### Issue to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to monetary compensation for loss?

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 November 10, 2012 and was to expire on April 30, 2013. Rent in the amount of \$950.00 was payable on the first of each month. A security deposit of \$475.00 was paid by the tenant. The tenant vacated the unit on December 12, 2012.

The landlord claims as follows:

a.	Unpaid rent for December 2012	\$ 950.00
b.	Loss of revenue for January 2013	\$ 950.00
c.	Liquidated damages	\$ 250.00
d.	Filing fee	\$ 50.00
	<b>Total claimed</b>	<b>\$ 2,200.00</b>

The landlord's agent testified that the tenant placed a stop payment on the cheque that was issued for December rent. The landlord seeks to recover unpaid rent in the amount of \$950.00.

The landlord's agent testified the tenant breached the fixed term agreement by vacating the unit prior to the expiry date of the agreement. The landlord's agent stated the tenant gave verbal notice on December 3, 2012, to vacate the unit on or before December 15, 2012. However, it was not until December 12, 2012, when they received the notice in writing as required by the Act. Filed in evidence is a copy of the notice.

The landlord's agent testified that when they received that written notice they commenced advertising the unit for rent on a popular local website, and because of the short notice they were unable to find a new tenant for January 2013. The landlord's agent stated the unit was rented for February 1, 2013. The landlord seeks to recover loss revenue for January 2013, in the amount of \$950.00. Filed in evidence is a copy of the advertisement.

The landlord's agent testified the fixed term agreement has a liquidated damages clause. This clause was an agreed pre-estimate of the landlord's costs of re-renting the unit that the tenant would be responsible to pay should they breach the fixed term agreement. The landlord seeks to recover the liquidated damages in the amount of \$250.00

### 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 26 of the Residential Tenancy Act states:

*26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

The evidence of the landlord's agent was the tenant place a stop payment on the rent cheque for December 2012. I find the tenant has breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent for December 2012, in the amount of **\$950.00**.

Section 45 of the Residential Tenancy Act states: (fixed term)

*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,*

The evidence of the landlord's agent was the tenant provided verbal notice on December 3, 2012 and written notice on December 12, 2012, to end the tenancy on December 15, 2012. However, under section 45 of the Act the tenant could not end the tenancy earlier than the date specified in the tenancy agreement. I find that the tenant has breached section 45 of the Act, as the earliest date they could have legally ended the tenancy was April 30, 2013.

As a result of the tenant not complying with the terms of the tenancy agreement or the Act the landlord suffered a loss of revenue for January 2013, the landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not breached the tenancy agreement or Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenant could have legally ended the tenancy.

However, under Section 7(2) of the Act, a party who claims compensation for loss must do whatever is reasonable to minimize the loss.

In this case, the evidence of the landlord's agent was that the unit was advertised for rent on a popular local website and due to short notice they were unable to find a new tenant for January 2013. The rental unit was rented for February 1, 2013.

As a result, I find the landlord made reasonable efforts to minimize the loss. Therefore, I find the landlord is entitled to recover loss of revenue for January 2013, in the amount of **\$950.00**.

As I have found the tenant has breached the fixed term agreement. I find the landlord is entitled to recover the liquidated damages as specified in the agreement. This amount is not a penalty as it was a pre-estimate of the landlord's cost of re-renting the unit. Therefore, the landlord is granted compensation for liquidate damages in the amount of **\$250.00**.

I find that the landlord has established a total monetary claim of **\$2,200.00** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the deposit of **\$475.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$1,725.00**.

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: April 03, 2013

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Residential Tenancy Branch

