



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MND, MNDC, MNSD, FF.*

### **Introduction**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for loss of income, cleaning and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his monetary claim. The tenant applied for the return of double the security deposit and for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

During the hearing the landlord withdrew the portion of his monetary claim that had to do with cleaning.

### **Issues to be decided**

- Did the landlord suffer a loss of income when the tenant broke the fixed term lease?
- Is the landlord entitled to a monetary order for loss of income and the filing fee?
- Did the landlord make application to retain all or part of the deposit in a timely manner?
- Is the tenant entitled to the return of double her security and pet deposits and to the recovery of the filing fee?

### **Background and Evidence**

The parties entered into a fixed term tenancy on September 01, 2012 with an end date of August 31, 2013. The monthly rent was \$825.00 due on the first of each month. The tenant paid a security deposit of \$412.50 and a pet deposit of \$200.00. The tenant moved out on May 01, 2013.

The tenant stated that prior to moving out, she showed the unit to two prospective tenants. The landlord testified that he advertised the availability of the rental unit on line and had the advertisement running constantly until a new tenant was found. He also stated that he fielded several calls but due to the rental market consisting of students, it was difficult to find a tenant prior to the start of the school year in September. The landlord stated that he enters into a fixed term tenancy agreement of one year for this reason.

The landlord stated that he found a tenant for June 15, 2013 and allowed her to move in at a reduced rent for June. The landlord is claiming loss of income for the month of May and half of June. The landlord pointed out that even though he received partial rent for June 15 to July 01, he was not making a claim for that portion of his loss of income.

The tenant stated that she heard from a friend of the new tenant that that new tenant wanted to move in on June 01, but the landlord informed her that it was not available as the previous tenant (applicant/respondent in this dispute) was paying rent up to June 15. The tenant filed a statement written by the new tenant's friend confirming the tenant's testimony.

The tenant stated that because the landlord did not allow the new tenant to move in on June 01, 2013, she believed that he did not make sufficient effort to find a new tenant and was therefore not entitled his claim for any loss of income he has suffered. The tenant also added that the landlord did not show the unit after she moved out and therefore she was entitled to the return of double her security and pet deposits.

Both parties are claiming the recovery of the filing fee.

## **Analysis**

### **Landlord's application:**

Section 45(2) 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:

- (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 on which the tenancy is based that rent is payable under the tenancy agreement.

In this case, the tenant ended the tenancy prior to the end date of the fixed term and therefore is responsible for any loss of income that the landlord may have suffered.

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

Having heard the testimony of both parties, I accept the landlord's testimony that he advertised the unit on line, fielded calls and had a couple of showings. I accept that the rental market consists of students who start their school year in September and it is for this reason that the landlord entered into a fixed term tenancy of one year. I further find that for this reason despite his efforts, the landlord was not able to find a tenant prior to June 15, 2013.

Regarding the statement filed into evidence by the tenant regarding the new tenant's request to move in on June 01, 2013, I find that on a balance of probabilities, it is more likely than not that the landlord would have accepted a new tenant for June 01, if he had the opportunity to do so. It was not in his interest to refuse a tenant for June 01 and therefore I prefer the landlord's testimony that he allowed the tenant to move in on June 15 at a reduced rent.

Based on the above, I find that the landlord has established a claim for loss of income for the period of May 01 to June 15, 2013 in the amount of \$1,237.50. Since the landlord has proven his case, I award him the filing fee of \$50.00.

**Tenant's application:**

The tenant has applied for the return of double the security and pet deposits. Section 38 of the Residential Tenancy Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the deposits or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the deposits.

The tenancy ended on May 01, 2013 and the landlord made application to keep the deposits in partial satisfaction of his claim for loss of income within a timely manner, on May 07, 2013. Therefore, I find that the tenant is not entitled to the return of double the deposits. Since the tenant has not proven her claim, she must bear the cost of filing her application.

Overall the landlord has established a claim of \$1,287.50. I order that the landlord retain the security deposit and pet deposit of \$612.50 in partial satisfaction of his claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$675.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

The landlord may retain the security deposit. I grant the landlord a monetary order in the amount of \$675.00.

The tenant's claim is dismissed.

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: July 31, 2013

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Residential Tenancy Branch

