



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, MNR, 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 under the Act and 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 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 sent by registered mail sent on April 26, 2013, a Canada post tracking number was provided as evidence of service, and the tenant did not appear.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant as been duly served in accordance with the Act.

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

### Preliminary issue

At the outset of the hearing the landlord's agent stated they withdraw their claim for unpaid rent for February 2013.

### Issues to be Decided

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

Is the landlord entitled to monetary compensation for loss under the Act?

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 January 11, 2013 and was to expire on January 31, 2014. Rent in the amount of \$1,100.00 was payable on the first of each month. A security deposit of \$550.00 was paid by the tenant.

The landlord claims as follows:

a.	Unpaid rent for April 2013	\$1,100.00
b.	Loss of rent for May 2013	\$1,100.00
c.	Filing fee	\$ 50.00
	<b>Total claimed</b>	<b>\$1,250.00</b>

The landlord's agent testified that the tenant's cheque for April 2013 was returned by the bank as the tenants had placed a stop payment. The landlord stated the tenant was then served with a notice to end tenancy for non-payment of rent. The landlord stated the tenants vacated the rental unit on April 11, 2013, without paying rent owed under the terms of the tenancy agreement. The landlord seeks to recover unpaid rent for April 2013, in the amount of \$1,100.00.

The landlord's agent testified that as soon as they were aware that the tenant was vacating the rental unit they advertised the rental unit on several local popular websites and they had multiple showings. However, due to the short notice were unable to find a tenant for May 2013. The landlord's agent stated they were able to mitigate the loss as they were successful in finding a new tenant for June 1, 2013. The landlord seeks to recover loss of rent for May 2013, in the amount of \$1,100.00.

### 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, that is, a balance of probabilities.

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 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

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 undisputed evidence of the landlord's agent was that the tenant did not pay rent owed for April 2013, as they placed a stop payment on their rent cheque. The landlord's agent stated as a result of the tenants action they were served with a notice to end tenancy for non-payment of rent. 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 April 2013, in the **\$1,100.00**.

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,*

The undisputed evidence of the landlord's agent was that due to the tenant's failure to pay rent they were evicted from the rental unit prior to the expiry of the fixed term agreement and as result of their actions they breached the fixed term tenancy.

As I have found previously in this decision that the tenant has breached section 26 of the Act, when they failed to pay rent and due to their action the tenancy ended. Therefore, I find the tenant has breached section 45 of the Act, as the earliest date they could have end the tenancy was January 31, 2014.

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

However, under section 7 of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss. The duty to minimize the loss begins when the party entitled to claim damages becomes aware that damages are occurring.

The undisputed evidence of the landlord's agent was that they advertised the rental unit on several popular websites and had many showing, however, due to the short notice were unable to find a new tenant until June 1, 2013. I find the landlord made reasonable efforts to minimize the loss. Therefore, I find the landlord is entitled to recover the loss of rent for May 2013, in the amount of **\$1,100.00**.

I find that the landlord has established a total monetary claim of **\$2,250.00** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the deposit and interest of **\$550.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$1,700.00**.

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 order 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: July 17, 2013

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Residential Tenancy Branch