



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding THIRD ESTATES LTD  
and [tenant name suppressed to protect privacy]

## **Decision**

**Dispute Codes:** MNR, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for loss of rent due to the tenant failing to fulfill the fixed-term tenancy.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

### **Preliminary Issue(s)**

#### **Adjournment**

During the hearing it was disclosed that the tenant had apparently faxed in a request for an adjournment of the hearing. However, no written request for an adjournment was found in the evidence or file.

Rule 6.1 of the Rules of Procedure states that the Residential Tenancy Branch will reschedule a dispute resolution proceeding if "*written consent from both the applicant and the respondent is received by the Residential Tenancy Branch before noon at least three (3) business days before the scheduled date for the hearing.*"

In this instance, there was no evidence to prove that the tenant complied with the above. Moreover, at the hearing, the landlord was asked whether or not they would consent to the tenant's request that the matter be adjourned and the landlord stated that they were not amenable to having the matter adjourned and reconvened at a later date.

Accordingly, I found that there was not sufficient justification under the Act and Rules of Procedure to support imposing an adjournment on the other unwilling party and the tenant's request for an adjournment was denied. The hearing then proceeded as scheduled.

### Amend Application

The landlord requested that their application be amended to include a monetary claim for liquidated damages, pursuant to the tenancy agreement, in addition to the claim for lost revenue. Rule 2.5 of the *Residential Tenancy Rules of Procedure* permits amending an application but imposes the following criteria:

- The applicant may amend the application without consent if the dispute resolution proceeding has not yet commenced. If applications have not been served on any respondents, the applicant must submit an amended copy to the Residential Tenancy Branch and serve the amended application on the other party.
- If the application has been served, and all requirements can be met to serve each respondent with an amended copy at least seven (7) days before the dispute resolution proceeding, the applicant may be permitted to file a revised application with the Residential Tenancy Branch. A copy of the revised application must be served on each respondent at least five (5) days before the scheduled date for dispute resolution proceeding.
- The application will not be amended where it would result in prejudice to the other party. If it is allowed, the arbitrator may adjourn the hearing to allow the respondent time to respond to the amended application.

I find that the tenant, when asked, stated that they did not agree with the landlord's intention to amend the application to include a liquidated damages claim. I find that amending this application would be contrary to the principle of natural justice because it would prejudice the respondent who had no advance notice of this monetary claim.

Given the above, I find that I am not able to hear, nor consider, the landlord's claim for the liquidated damages, and therefore will not make any determinations nor findings, except those that pertain solely to the landlord's requested compensation for loss of rent that was specified on the landlord's application.

### Issue(s) to be Decided

Is the landlord entitled to monetary compensation for loss of rent?

## **Background and Evidence**

Submitted into evidence was a copy of the tenancy agreement, a copy of the move-in and move-out condition inspection reports and a copy of the tenant's written notice to vacate dated April 27, 2013.

The landlord testified that the tenancy began on April 16, 2013 as a one-year fixed term. The rent was \$1,200.00 per month. A security deposit of \$600.00 was paid. The landlord testified that on April 27, 2013, the tenant gave written notice to move out, effective the end of April 2013 and the tenant vacated the unit at the end of April 2013.

The landlord testified that the landlord immediately found a tenant to re-rent the unit as of May 15, 2013, but suffered a loss of one-half a month rent in the amount of \$600.00, which is being claimed.

The tenant argued that they felt compelled to terminate the tenancy prior to the end of the fixed term tenancy because the landlord had repeatedly entered their suite without notice and they felt that their safety and security was being threatened.

The tenant acknowledged that they did not call the police, nor did they seek a remedy through dispute resolution prior to terminating the tenancy.

The landlord denied that the tenant was not properly notified in writing pursuant to before accessing the unit.

## **Analysis**

In regard to an Applicant's right to claim damages from another party, Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7.

Based on the testimony and evidence of the landlord, I find that the tenant violated the fixed-term tenancy by terminating it prior to the expiry date. I find that the landlord incurred a loss of rent for the month of February 2011 in the amount of \$600.00.

With respect to the tenant's argument that they were justified in terminating the fixed term before the expiry date, I find that they were obligated to comply with the contract they had signed.

I find that section 29 (1) of the Act states that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless the tenant gives permission at the time of the entry or not more than 30 days before the entry or unless the landlord gives the tenant written notice at least 24 hours.

A landlord may gain entrance if an emergency exists and the entry is necessary to protect life or property and the Act permits a landlord to inspect a rental unit monthly in accordance with subsection (1) (b).

Even if I accept that the landlord had wantonly violated section 29 of the Act, by intruding on the tenant without proper notice, this fact would still not function to relieve the tenant of their own obligations or liabilities under the contract. I find that there is an expectation that the tenant would first seek a remedy through an application for Dispute Resolution, before choosing to terminate the tenancy prior to the expiry date.

Given the above, I find that the landlord is entitled to retain the tenant's \$600.00 security deposit in compensation for the loss of one-half a month rent for May 2013.

I also find that the landlord is also entitled to reimbursement of the \$50.00 fee paid by the landlord for this application and I hereby grant the Landlord an order under section 67 for \$50.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### **Conclusion**

The landlord is partially successful in the application and is granted an order to retain the tenant's security deposit and a monetary order for the cost of the application.

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: August 07, 2013

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Residential Tenancy Branch