



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenants' security deposit; and to recover the filing fee from the tenants for the cost of this application.

The tenants, an agent acting for the tenants and the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Preliminary Issues

At the hearing the landlord testifies that she has married since filing her application and is now known by her married name. The parties did not raise any objections to the landlord's new surname being corrected on the application.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to keep the tenants security deposit?

### Background and Evidence

The parties agree that this tenancy started on August 01, 2012 naming both tenants on the tenancy agreement. This was a fixed term tenancy which the party's explain was amended to end on May 31, 2013. The tenancy ended on December 31, 2012. Rent for this suite was \$1,150.00 per month due on the 1<sup>st</sup> day of each month. The tenants paid a security deposit of \$600.00 at the end of July, 2012.

The landlord testifies that she received an e-mail from the tenants in October, 2012. This e-mail explained that one of the tenants had to move out after the semester and states that the other tenant had an option to move in with a team mate. The e-mail requests that the landlord advertise the suite for January. The tenants indicated that they understood that they had a nine month lease, but ask if the landlord finds someone to fill the suite would it be OK.

The landlord testifies that she placed an advertisement on October 13, 2012 to re-rent the suite so the remaining tenant could go and live with his team mate. The landlord testifies that she cannot find a copy of the original advisement but has provided an e-mail from a prospective tenant about the suite dated December 01, 2012. The landlord testifies that she had very few inquires about the suite during 2012. The landlord testifies that she continued to advertise the suite for rent and had no enquires through December and January.

The landlord testifies that she entered into e-mail correspondence with the tenants' parents to try to reach an agreement as the suite had still not been rented for January, 2013. The landlord testifies that the tenants paid rent for December, 2012 and paid \$1,000.00 for January, 2013. The landlord testifies that she agreed to forgo the additional \$150.00 in January. The landlord testifies that she had tried to reach an agreement that the tenants could just pay half the rent owed but the tenants or their parents failed to respond and so no agreement was entered into with them.

The landlord testifies that she also tried to reach an agreement concerning the tenants' furniture left in the suite. When prospective tenants contacted the landlord in December, 2012 they asked if the suite was furnished. The landlord testifies that she contacted the tenants parents about purchasing the tenants abandoned furniture if these prospective tenants wanted the suite. However as the landlord did not hear back from those prospective tenants the landlord states she did not want the tenants furniture and it remains in storage.

In February the landlord received a response to the advertisement requesting a tenancy for May 01, 2013. The landlord testifies that she informed those prospective tenants that she could not hold the suite for that length of time and would continue to advertise the suite. If the suite did not rent then those protective tenants could have the suite for May 01, 2013. The landlord testifies that she updated the advertisements and eventually rented the suite for May 01, 2013 at \$1,000.00 per month.

The landlord seeks to recover a loss of rental income for February, March, and April of \$3,450.00, \$150.00 for January and \$150.00 for the difference in rent for May. The landlord seeks to apply the security deposit of \$600.00 towards the outstanding rent and seeks to recover the \$50.00 filing fee.

The tenants dispute the landlords claim. The tenants' testify that they gave the landlord e-mail Notice on October 12, 2013 saying that they would both be leaving Christmas time. The tenants submit that this should have given the landlord plenty of time to find a new tenant for January but the landlord did not start to advertise the unit until January, 2013. The tenants' agent testifies that his wife looked on an internet site in November but did not see the advertisement posted. The tenant's agent testifies that there is an e-mail sent from the landlord where the landlord agrees to accept January and Februarys rent, the security deposit and the tenants furniture.

The tenant DJ testifies that they received a letter from the landlord's lawyer in which it is stated that the landlord did not know if one of the tenants was coming back in January, but now the landlord is saying she knew in October and advertised the suite then.

The landlord reiterates that when she received the e-mail in October from DJ it indicated that JG was leaving and DJ was staying until December end but wanted to go and live with a friend if the landlord could re-rent the suite. The landlord testifies that this is why the first advertisement was placed in October to try to help the tenants move out sooner.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 45(2) of the *Act* which states:

*(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, that rent is payable under the tenancy agreement.*

I find the tenants entered into a fixed term lease. A copy of this lease agreement signed by the parties has been provided in evidence. The terms of this lease agreement show that the lease ends on July 01, 2013. The parties agreed at the hearing that this had been amended to May 31, 2013 as the tenants only wanted a nine month lease. The tenants paid rent up to the end of December and the \$1,000.00 for January by agreement of the landlord. However as the landlord was unable to re-rent the suite until

May 01, 2013 the tenants remain liable to meet the terms of the lease agreement and must pay the landlord any rent up to the date the suite was re-rented.

The tenants argue that the landlord agreed to take rent for January and February, the security deposit and the tenants furniture however I have no such agreement in writing before me and the landlord has responded by stating she only wanted the furniture for prospective tenants who did not then take the suite and no agreement was finalized as the landlord received no further response from the other party.

The tenants argue that the landlord did not mitigate the loss by advertising the suite as soon as the tenants gave Notice. First of all a Notice sent by e-mail is not proper Notice. The Landlord was unable to show the exact date that the first advertisement was placed for the suite; however, the landlord has shown that an advert was placed as the landlord has provided evidence of the response from prospective tenants on December 01, 2012. The landlord has also shown evidence of subsequent adverts placed on two different internet sites. I am therefore satisfied with the evidence before me that the landlord did make attempts to re-rent the suite to mitigate the loss of rent for the remainder of the term of the lease.

I therefore find the landlord is entitled to recover unpaid rent of \$1,150.00 for February, March and April, 2013 to the sum of \$3,450.00. The landlord has applied for a further sum of \$150.00 for January, 2013 however as the landlord agreed at the hearing that she had forgone this amount for January then I am not prepared to award this to the landlord now. This section of the landlords claim for \$150.00 is dismissed.

The landlord has also applied for the difference in rent of \$150.00 for May, 2013. I refer the parties to the Residential Tenancy Policy Guidelines # 3 which provides more clarification in this matter and states, in part, that the damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. This

may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy.

Consequently as the landlord re-rented the suite at a lower rent of \$1,000.00 in May and the tenants lease ended with the landlord at the end of May I find the difference owed to the landlord is \$150.00.

I Order the landlord to retain the tenants security deposit of \$600.00 pursuant to s. 38(4)(b) of the *Act*. This amount will be offset against the unpaid rent.

As the landlord has been largely successful with her claim I find the landlord is also entitled to recover the \$50.00 filing fee from the tenants pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord as follows:

Unpaid rent for February, March, April,	\$3,450.00
Loss of rent for May	\$150.00
Subtotal	\$3,600.00
Less security deposit	(-\$600.00)
Filing fee	\$50.00
Total amount due to the landlord	\$3,050.00

### Conclusion

I HEREBY FIND largely in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$3,050.00**. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

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 13, 2013

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Residential Tenancy Branch

