



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order. Both parties appeared and had an opportunity to be heard.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order and, if so, in what amount?

### Background and Evidence

This tenancy commenced September 1, 2012 as a one year fixed term tenancy. The monthly rent of \$1500.00 was due on the first day of the month. The tenant paid a security deposit of \$750.00. The tenant also agreed to pay \$35.00 per month for the alarm system.

On May 1, 2013 the landlord issued and served a 10 Day Notice to End Tenancy for Non-Payment of Rent. The tenant complied with the notice and moved out by May 9. They did not pay the pay rent.

The landlord was able to re-rent the unit for the same rent as of June 15, 2013.

The tenant provided their forwarding address by text message, upon the request of the landlord, on May 17. The landlord filed this application for dispute resolution on May 29, claiming the projected loss of rental income to the end of the term. By the date of the hearing the landlord was only claiming the rent and the security system fee for the period May 1 to June 14.

The tenant argues that the landlord ended the tenancy by choosing not to wait for the rent and by serving them with a notice to end tenancy so they should not be responsible for any losses suffered by the landlord as a result of her actions.

### Analysis

As explained in *Residential Tenancy Policy Guideline 3: Claims for Rent and Damages for Loss of Rent*, where a tenant has fundamentally breached the tenancy agreement by not paying the rent the landlord may choose to end the tenancy, with notice to the tenant of an intention to claim damages for loss of rent for the remainder of the term of the tenancy. Ideally, this notice is given at the same time as the notice to end tenancy is given to the tenant. Filing of a claim and service upon the tenant after the tenant has vacated may or may not be found to be sufficient notice, depending on the circumstances. Factors which the arbitrator may consider can include the length of time since the end of the tenancy, whether the tenant's whereabouts were known to the landlord, and whether there has been any prejudice to the tenant as a result of the passage of time.

If the arbitrator finds that sufficient notice has been given to the tenant, the damages awarded to a landlord 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 the tenant could legally have ended the tenancy. This landlord has a statutory duty to mitigate the loss by re-renting the premises as soon as possible.

Having considered the facts that the landlord did not have an address at which an application for dispute resolution could be served until May 17; that the landlord filed the application for dispute resolution within two weeks of obtaining that address and within one month of the tenants moving out of the rental unit; and that the tenants did not suffer any prejudice as a result of the passage of time; I find that the landlord did give the tenant sufficient notice of her intention to claim damages for loss of rent for the remainder of the term of the tenancy.

I find that the landlord re-rented the unit within a reasonable period of time thereby successfully mitigating the losses.

Accordingly, I find that the tenant is responsible for the rent for the period May 1 to June 14 in the amount of \$2250.00 and the alarm system fee for the same period in the amount of \$56.25.

### Conclusion

I find that the landlord has established a total monetary claim of \$2356.25 comprised of loss of rental income in the amount of \$2250.00, unpaid security system fee in the

amount of \$56.25, and the \$50.00 fee paid by the landlord for this application. Pursuant to section 72 of the Residential Tenancy Act I order that the landlord retain the deposit of \$750.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1606.25. If necessary, this order may be filed in the Small Claims Court and enforced 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: September 17, 2013

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Residential Tenancy Branch

