



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This is an application for a monetary order for \$1275.00 and recovery of the \$50.00 filing fee. A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

It's the landlord entitled to a monetary order in the amount of \$1275.00, and recovery of the \$50.00 filing fee?

### Background and Evidence

Landlord testified that:

- This tenancy began on October 1, 2012 with a monthly rent of \$1275.00.
- This is a fixed term tenancy with an expiry date of September 30, 2013.

- In May 2013 the male tenant phoned and verbally stated they were ending the tenancy at the end of June 2013 as they had decided to purchase a house.
- He told the tenant that they could do that, and that he would attempt to re-rent it, however if he was unable to do so they would be liable for any lost rental revenue as this was a fixed term tenancy.
- When he told the tenant that he may be liable for lost rental revenue the tenant seemed angry and then started complaining about problems in the rental unit.
- He therefore told the tenant that he would need a written notice to end the tenancy and that notice was received shortly thereafter.
- In the written notice they make no mention of the original reason given about purchasing a house, it's just full of complaints about the rental unit, and claiming that they were moving because of mold in the rental unit being a health issue.
- There had been a flood in the rental unit when the pressure valve failed on the hot water tank, however when he asked the tenants if they wanted him to come and clean up, they stated that they would handle it themselves.
- He therefore allowed the tenants to clean up the rental unit themselves, and he even paid them \$500.00 to cover their costs of dealing with the flood in the mold issue.
- He believes the real reason the tenants wanted to end the tenancy was because they were purchasing a house, and therefore he feels that they should be liable for the lost rental revenue.
- He did it mitigate the loss by initially running ads himself on Kijiji and then later transferring the house to a property management company. The property management company was able to re-rent the unit for August 1, 2013 however he lost the rental revenue for the month of July 2013 in the amount of \$1275.00.

The respondents testified that:

- When they phoned the landlord to informing him that they were moving, they did originally state it was because they were purchasing their own place, however

the reason they decided to purchase their own place was because they wanted to move out of this rental unit due to the mold issue.

- There had been a flood in the rental unit and the landlord **did not** offer come and clean up the rental unit and therefore they were forced to do it themselves.
- The landlord did pay us \$500.00 to cover the cost of the cleanup and the cleaning materials needed to deal with the mold, however the landlord should have brought in professional cleaners to deal with the mold.
- We believe this was a substantial breach of a material term of the tenancy agreement and therefore believe we had the right to end the tenancy without the normal required notice.
- Further, the landlord did not take reasonable steps to re-rent the unit, as he advertised it for \$100.00 more than they had been paying, which was very high for rental units in that area.
- We therefore believe the landlords claim should be dismissed.

### Analysis

I do not accept the tenant's claim that they vacated due to a breach of a material term of the tenancy agreement, as this claim was not raised until after they had told the landlord they wanted to and purchase a house of their own. I therefore believe the tenants real reason for wanting to vacate was the fact that they were purchasing their own home.

That being said it is my finding however that the landlord has not shown that he took reasonable steps to mitigate the loss.

First of all, although the rent that these tenants had been paying was \$1275.00, the landlord increased the requested rent to \$1375.00. This increase in rent may very well have been the reason why the unit did not rent for the month of July 2013. Further, the only evidence of those ads is two ads that were run in the month of May 2013, there is

no evidence to show that any ads were run at all in the month of June 2013, even though this tenancy was not ending until the end of June 2013.

Secondly, although the applicant claims that he used a property management company to re-rent the unit, the landlord has provided no evidence to show what efforts if any the property management company made to rent the unit for the month of July 2013, or what amount of rent was being asked for the rental unit.

Therefore since the landlord is required to take reasonable steps to re-rent the unit and mitigate the loss, and since the landlord has not met the burden of proving that this was done, I will not allow the claim for lost rental revenue.

### Conclusion

This application is dismissed in full without leave to reapply.

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: October 24, 2013

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Residential Tenancy Branch