



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNR, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for money owed or compensation under the Act, and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

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

Is the landlord entitled to monetary compensation for damages?

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 October 1, 2012 and was to expire on October 1, 2013. Rent in the amount of 750.00 was payable on the first of each month. A security deposit of \$375.00 was paid by the tenants.

The landlord testified that on June 21, 2013, the tenants stated that they would be moving out on June 30, 2013. The landlord stated he did not receive any written notice to end the tenancy.

The landlord testified that on July 1, 2013, he advertised the rental unit on two popular websites and continue advertising on one of those sites for the all of July and August

until he found new tenants for September 15, 2013. The landlord stated that the rent was posted at the rate of \$850.00 per month.

The tenant (MW) testified that they provided written notice on June 29, 2013, by fax, to end the tenancy on June 30, 2013. The tenant stated he had tried to provided written notice earlier however, the landlord was avoiding him.

The tenant (MW) testified that the landlord breach a material term of the tenancy, by having one hydro meter and required the hydro account to be in their name and have to collection hydro payments from the other occupant who resided in a separate unit. The tenant stated that the landlord was reckless by renting the upstairs premise to someone whom he was aware was not suitable and that her behavior had been inappropriate and unacceptable.

The tenant (MW) testified that they believe the landlord purposely trying not to attract a new tenant as they increase the rent and did not allow pets. Although pets were allow before. The tenant stated that the landlord also had signage which he did not use until the end of August and shortly after the signage was posted the rental unit was rented.

### 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 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,*

In this case, the evidence of the landlord was that the tenant breached the fixed term tenancy by providing notice to end the tenancy verbally on June 21, 2013. The evidence of the tenant was that they provided written on June 29, 2013, to end the tenancy June 30, 2013.

The evidence of the tenant was they believed landlord had breached the material terms of the tenancy agreement. However, to end a tenancy agreement for breach of a material the tenant must inform the other party in writing, that there is a problem and that they believe the problem is a breach of a material term of the tenancy agreement. The letter must also notify the landlord that the problem must be fixed by a deadline. That date must be a reasonable timeframe and if the problem is not fixed by the deadline, that the party will end the tenancy.

In this case, the tenants did not provided a letter to the landlord which alleged a material breach prior to receiving the notice of termination of lease. Further a material term is a term that the parties both agreed in writing at the start of the tenancy that is so important that the most trivial breach of that term would give the other party the right to end the tenancy. Not all terms of a tenancy agreement are considered material terms.

I find the tenants have not provided evidence to support that they gave the landlord notice of a breach of material term or reasonable time to address the alleged breached. Further, I find the tenants have not proven that these were material terms. I find the tenants have breach section 45(2) of the Act as the earliest date they could have legally ended the tenancy was October 1, 2013, as stated in the tenancy agreement.

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 July, August and a portion of September 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 of rent up to the earliest time that the tenants 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. Failure to take the appropriate steps to minimize the loss will have an effect on a monetary claim, where the party who claims compensation can substantiate such a claim.

In this case, I accept the evidence of the tenant that they provided written notice on June 29, 2013, to end the tenancy for June 30, 2013. I find that notice was insufficient notice for the landlord to attempt to mitigate the loss for rent for the month of July 2013, as it would have highly unlikely to find a suitable tenant on such short notice. Therefore, I find the landlord is entitled to recover loss of rent for July 2013, in the amount of **\$750.00**.

The evidence of the landlord was that they posted advertisements of two popular websites and that the asking rent was \$850.00. I find attempting to re-rent the premises at a significant higher rent does not constitute mitigation. I find the landlord did not make reasonable efforts to minimize the loss for August and September 2013, rent. Therefore, I find the landlord is not entitled to compensation for loss of revenue for those months.

I find that the landlord has established a total monetary claim of **\$800.00** comprised of the above described amount and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit and interest of **\$375.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$425.00**.

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 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: October 07, 2013

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Residential Tenancy Branch

