



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding QUAY PACIFIC PROPERTY MANAGEMENT LTD  
and [tenant name suppressed to protect privacy]

## **Decision**

**Dispute Codes:** MNR, FF

### **Introduction**

This Dispute Resolution hearing was convened to deal with an application by the landlord for a monetary loss for three month's loss of rent due to the tenant terminating the fixed term tenancy prior to the expiry date of the contract.

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.

### **Issues to be Decided**

Is the landlord entitled to monetary compensation under section 67 of the *Act*?

### **Background and Evidence**

The tenancy began January 1, 2013 as a one-year fixed term to end on December 31, 2013, with rent set at \$1,795.00 per month and a security deposit of \$897.50 was paid.

The landlord testified that, on September 4, 2013, the tenant gave written notice to terminate the tenancy early, effective September 30, 2013, despite the fact that the tenant had committed to a fixed term not to expire until the end of December 2013.

The landlord testified that advertisements to re-rent the unit were commenced immediately and had submitted into evidence copies of rental advertisements indicating that the unit was available for \$1,950.00 per month.

The landlord testified that the tenant vacated at the end of September 2013 and despite efforts to re-rent the unit, the landlord was not able to find a tenant to take the suite and it remained vacant until the end of the fixed term. The landlord testified that, as a result, they incurred a loss of three month's rent totaling \$5,385.00 which is being claimed.

The tenant testified that the tenancy had to be ended by the tenant for health reasons and submitted a copy of a medical note from her doctor. The tenant disputed the landlord's claim that they tried to reasonably mitigate by re-renting the unit. The tenant pointed out that, during the 26 days after the tenant gave Notice to vacate, the landlord only showed prospective renters through twice. The tenant disagrees with the landlord's monetary claim and feels that it should be dismissed.

The landlord argued that, although the ads for the unit showed higher rent, it was the same rate they had advertised prior to this tenancy. According to the landlord, the expectation was that rent would be negotiated between the landlord and the prospective renters and would result in the same as the rate offered to this tenant. The landlord also testified that a lower rent was featured in some advertisements not in evidence.

### **Analysis: Landlord's Application**

With respect 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 this Act or their 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.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must always satisfy each component of the 4-part test below:

#### **Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the landlord, to prove the claim.

I find that the tenant did violate the agreement by ending the tenancy before the expiry date of the fixed term and a loss was incurred by the landlord as a result. Therefore I find that elements 1, 2 and 3 of the above test for damages have been met.

However, to meet element 4 of the test, I find that the landlord is required to prove reasonable steps were taken to mitigate their loss. The landlord testified that they sought a new renter the unit was advertised without delay, and I accept this testimony and evidence. However, I find the evidence shows that the unit was advertised for \$1,950.00, instead of the \$1,795.00 rate that the tenant was paying. I find that attempting to re-rent the unit for a higher amount does not sufficiently meet the requirement under section 7(2) to make a reasonable effort to minimize the loss that was caused by the tenant's violation of the agreement. Therefore, I find that the landlord's claim fails to satisfy element 4 of the test for damages.

While I accept that the tenant terminated this tenancy with less than one month notice and violated the tenancy terms causing the landlord to suffer a loss, I find the fact that the landlord did not reasonably mitigate this loss does not allow me to grant the landlord the amount of compensation being sought. However, I do grant the landlord compensation equivalent of one half a month rent in the amount of \$897.50.

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to be compensated in the amount of \$897.50. I order that the landlord retain the tenant's \$897.50 security deposit in satisfaction of the monetary award.

As the landlord has not been completely successful, I find that the landlord is not entitled to be reimbursed the \$50.00 cost of the application.

### **Conclusion**

The landlord is partly successful in the claim and is granted an order to retain the tenant's security deposit..

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: January 16, 2014

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Residential Tenancy Branch