



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to an application made by the landlords for a Monetary Order relating to: unpaid rent and utilities; damage to the unit, site or property; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (referred to as the “Act”), regulation or tenancy agreement; to keep all or part of the pet damage or security deposit; and to recover the filing fee from the tenant for the cost of the application.

One of the landlords appeared for the hearing and testified that he had served the Notice of Hearing, a copy of the application and the evidence for this hearing to the tenant by registered mail. The landlord provided the Canada Post tracking number and testified that he had sent the hearing documents to the address which had been provided to him by the tenant’s work administration staff as an address where he could send the tenant’s forwarding mail to. Section 90 of the Act states that a document served by mail is deemed to have been received five days later. In the absence of the tenant to dispute this, I accept the testimony of the landlord and find that the hearing documents were sent to a service address of the tenant in accordance with the Act,

The tenant did not appear for the hearing despite being served in accordance with the Act and also failed to provide any evidence in advance of the hearing.

The landlord was permitted, under Section 11.5 of the Rules of Procedure, to provide additional documentary evidence of how he mitigated his losses in this case. The undisputed affirmed testimony of the landlord, along with the documentary evidence provided by the landlords has been carefully considered in this decision.

At the start of the hearing, the landlord indicated that his monetary claim only related to monetary compensation for loss of rent. As a result, I dismiss the landlord’s application for damage to the unit, site or property and focus the remainder of my decision on the resulting application.

### Issue(s) to be Decided

- Is the landlord entitled to monetary compensation due to the tenant breaking a fixed term tenancy?
- Did the landlord mitigate his losses?

### Background and Evidence

The landlord testified that the tenancy started on December 18, 2012 for a fixed term of one year due to end on December 18, 2013. The landlord took a \$600.00 security deposit from the tenant on December 18, 2012 which the landlord still retains. Rent was payable by the tenant to the landlord in the amount of \$1,200.00 on the first day of each month. A written tenancy agreement was completed and provided as evidence for this hearing. The landlord and tenant completed a move-in condition inspection of the rental suite on December 20, 2013, which was also provided as evidence, and shows that the rental suite was brand new at the start of the tenancy.

The landlord testified that the tenant indicated that he wanted to leave the rental suite at the end of September, 2013 but ended up abandoning the suite in the 3<sup>rd</sup> week of August, 2013 without giving any written prior notice. However, the tenant did pay rent for August, 2013. The landlord testified that he made attempts to re-rent out the suite but was unable to do so until the start of January, 2014. As a result, the landlord claims four months worth of lost rent in the amount of \$4,800.00. However, the landlord's application amount only indicates \$4,700.00 for the monetary claim.

The landlord testified that the tenant left some damages in the rental suite which took sometime to repair until September 5, 2013 after which the landlord made attempts to re-rent it. The landlord provided a copy of an advertisement showing the rental suite for re-rental which was posted on September 5, 2013 for rental starting on September 15, 2013. The advertisement shows that the posting will expire on October 5, 2013.

### Analysis

The tenant failed to appear for the hearing and did not provide any evidence in advance of this hearing. As a result, I have completed the following analysis of the landlords' claim in the absence of any evidence from the tenant to dispute the evidence and base my reasons on the landlord's affirmed testimony and documentary evidence provided.

In relation to the landlords' claim of unpaid rent I make the following findings. Section 45(2) (b) of the Act states that a tenant may end a fixed term tenancy by giving the

landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the fixed term. As a result, I find that the tenant failed to abide with the requirements of the Act in relation to the fixed term tenancy and ended the tenancy less than 4 months earlier than is allowed under the Act in relation to the signed fixed term tenancy agreement provided as evidence.

Section 7(2) of the Act states that a party claiming compensation for non compliance with the Act must do what is reasonable to minimize the loss. I accept the undisputed testimony of the landlord, along with the condition inspection report showing the rental suite was brand new, that the tenant vacated the rental suite causing damage which resulted in the delay of the landlord putting the suite back on the rental market until September 5, 2013. However, I find that the landlord has not provided sufficient evidence to show that he mitigate his losses in relation to section 7(2) of the Act for all of the period claimed in the landlord's application. Based on the advertisement provided by the landlord to show his attempt to re-rent the suite for September, 2013 only, I am prepared to award the landlord only one month's rent as compensation.

I also find that the landlord is entitled to the \$50.00 filing fee for the cost of this application pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the tenant is \$1,250.00. As the landlord already holds \$600.00 in a security deposit, I order the landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38(4) (b) of the Act. As a result, the landlord is awarded \$650.00.

### Conclusion

For the reasons set out above, I grant the landlords a Monetary Order pursuant to Section 67 of the Act in the amount of **\$650.00**. This order must be served on the tenant and may then be filed and enforced in the Provincial Court (Small Claims).

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

---

Residential Tenancy Branch

