



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

While the tenant had provided a binder full of evidence the landlord did not indicate at the hearing that he had not received any evidence from the tenant. After the hearing the landlord submitted a response to the tenant's 3 page written submission. As this response was received after the hearing and as the majority of the submission is not relevant to the matters before me, I have not considered it in this decision.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for lost revenue and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on October 27, 2012 for a 1 year fixed term tenancy beginning on December 1, 2012 for a monthly rent of \$2,200.00 due on the 1<sup>st</sup> of each month. The tenant vacated the rental unit during the month of June 2013.

The tenant submits that there was a substantial list of repairs that were required to be made and that before moving out she had sought to have the landlord make the repairs

but he failed to do so. She states that she paid rent for the month of June 2013; gave the landlord a list of items that need repair; and was prepared to move back in to the rental unit once she heard from the landlord that the repairs had been made. The tenant submits that she was never contacted again by the landlord to be advised that the repairs were complete.

The tenant did not provide any documentary evidence that she provided a notice to the landlord that he was in breach of a material term of the tenancy or that she intended to vacate the rental unit should he fail to correct the breach within a reasonable time.

The landlord submits that when the tenant vacated the rental unit he set about to complete work on the property, as a result of the condition he states the tenant left the rental unit in, and then to re-rent the unit.

The landlord submits that he had hired a property management company to manage the property and he is not sure of the content of the advertisements that were posted on the internet and local paper during the last week of July. He did confirm that the posted rent sought was \$2,800.00. The tenant testified that the advertisement stipulated corporate rentals only. The landlord confirmed the rental unit was re-rented to a corporation as a residence for their staff.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45(2) of the *Act* stipulates that a tenant may end a fixed term tenancy by giving the landlord a notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after

the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Based on the evidence and testimony of both parties I find the tenant ended the tenancy when she vacated the rental unit during the month of June. However as the tenant provided no evidence that she had provided the landlord with a written notice of a breach of a material term and of her intent to end the tenancy should the landlord fail to correct the breach, I find the earliest the tenant could end the tenancy was November 30, 2013.

As such, I find the tenant is responsible for the payment of rent to the landlord for the duration of the tenancy agreement subject only to the landlord's obligation to mitigate his losses.

Section 7(1) of the *Act* stipulates that if a landlord or tenant does not comply with the *Act*, regulations or tenancy agreement the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 7(2) states that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, regulation or tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I find the landlord has provided no evidence that the rental unit could not have been available for rent effective July 1, 2013 because of any actions on the part of the tenant and therefore he should have been advertising the availability of the rental unit to be July 1, 2013. As such, I find that beginning to advertise during the last week of July 2013 is not reasonable and I dismiss the landlord's claim for lost revenue for the month of July 2013.

I find that the landlord did subsequently advertise the unit's availability for the beginning of August 2013 and as such I find the tenant is responsible for the rent for the months of August, September, October, and November 2013 subject only to the landlord's obligation to mitigate his losses.

From the landlord's testimony that he was seeking \$2,800.00 in rent instead of the \$2,200.00 the tenant was paying and from the tenant's undisputed testimony that the advertisement also restricted the advertising pool to corporate tenants I find that the landlord's advertising was not a reasonable attempt to mitigate his losses as required under Section 7(2).

To be reasonable, I find the landlord would have had to not place any restrictions on the advertising pool and that he would have attempted to rent the unit at the same rent as the tenant was paying or lower. As such, I find these actions confirm the landlord's actions were not reasonable attempts to mitigate his losses.

Conclusion

Based on the above, I dismiss the landlord's claim in its entirety.

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: February 24, 2014

---

Residential Tenancy Branch

