



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR RR MNDC MNSD FF

### **Introduction:**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 44, 45 and 67 for rental loss due to a breach of a fixed term lease and for other damages;
- b) An Order to retain the security deposit pursuant to Section 38; and
- c) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- d) A monetary order or rent rebate as compensation for false advertising (misrepresentation) and for facilities promised but not included;
- e) To recover twice the security deposit pursuant to section 38; and
- f) To recover the filing fee for this application.

### **SERVICE**

The landlord and an agent for the tenant attended the hearing and each confirmed receipt of each other's Application for Dispute Resolution. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

### **Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that there was breach of a fixed term lease and he is entitled to a monetary order for rental loss and damages and to recover the filing fee for this application?

Has the tenant proved on the balance of probabilities that the unit was falsely advertised and misrepresented and he is entitled to have the contract rescinded and to recover his security deposit plus a rent rebate?

**Background and Evidence:**

The landlord and the tenant's agent attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the unit was advertised on the internet and a false address was given to the tenant who enquired from another country. The landlord said the tenant had asked for a lot of information including photographs of furniture and his telephone number so he was nervous that it was a scam so he gave a different address initially. He also sent a photograph of the wrong building. He said he sent a copy of the lease by email on July 22, 2013 and when the tenant saw the different address, he sent an email explaining why. He requested \$200 in advance and it was sent to him but even then, he gave the wrong postal code. However, he said the tenant was aware of the different address before sending the \$200 for he advised him by telephone.

When the tenant arrived with his daughter on July 27, 2013, he signed a fixed term lease for 6 months dated July 27, 2013. The tenant vacated on August 31, 2013 and the landlord was unable to rent until October 1, 2013 so he requests a monetary order for \$800 for one month's rental loss plus \$140 in damages. On the Application, he claimed for two month's rental loss until I pointed out to him that the new lease stated a commencement of October 1, 2013. He also said the tenant damaged the laminate floor and a screen. There was no condition inspection report done at move-in, he has no invoices for repair as it has not been done but he points to a clause in the lease addendum that states that everything in the suite is in working condition and clean. He also provided photographs.

The agent said the tenant was under duress to sign the lease after many hours of air travel and arriving at 1:00 a.m., he was upset about the false pretence but he had nowhere else to go with his daughter so he signed the lease. He submits that it should be void and unenforceable. He stated that the landlord only emailed the rental agreement and correct address after the tenant sent \$200 as part of the security deposit and the tenant has submitted a written statement confirming this and that he had called the Police to get the landlord's real address. He notes that this is the subject of a fraud investigation for bait and switch and points out that the landlord admitted to intentionally sending the wrong address and wrong photograph of the house in the hearing. The landlord submits that he made the tenant aware of the correct address by phone before he sent the \$200.

His agent submits that the tenant did no damage and the clause in the lease merely means that items are functional and does not speak to condition of floors or screens. He stated that the tenant provided his forwarding address in writing on August 21, 2013 when he personally gave a Notice to the landlord that he was vacating on August 31,

2013; the landlord denies receiving this. He claims twice his security deposit refunded in accordance with section 38 and also asks for \$400 rent rebate for the misrepresentation which cost him money to move again, much stress and for the lack of a proper laundry facility and the problem of the thermostat being turned off and taped. Although the landlord included laundry in the rent, the landlord told him after he signed the lease that he was limited to two loads a week in a very small machine; this would be inadequate for his daughter and himself but the landlord said he could pay more or go to a Laundromat. The landlord filed his Application on October 24, 2013 to claim against the deposit.

In evidence are copies of the lease agreements, many emails between the parties, and photographs of the tenant illustrating the problems and the condition of the unit at move-in and move-out.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

### **Analysis**

The onus is on each applicant to prove on a balance of probabilities their claim. There has been a claim by the tenant of significant misrepresentation by the landlord which may amount to fraud. Misrepresentation is defined in thefreedictionary.com as “an assertion or manifestation by words or conduct that is not in accord with the facts” and false advertising of land is given as an example. I find the preponderance of the evidence in this case is that the landlord misrepresented the location of the suite until the tenant sent \$200 to him and questioned the address that had been given to him through emails and the Police. I find this misrepresentation was deliberate as the landlord even sent a false photograph of the rental address. I do not find the landlord’s evidence credible that he gave this false information because he was afraid of a scam; by advertising a unit for rent, he was not in the position of having to advance funds whereas the prospective tenant, in relying on this false information, was put in the position of acting to his detriment.

Remedies for either fraudulent misrepresentation or negligent misrepresentation are rescission of contract by the innocent party and entitlement to claim damages (e-lawresources.co.uk). I find the tenant in this case entitled to rescission of the contract or lease which will place the parties in the position as if the contract was never entered. In effect, this means that the tenant is not responsible for rental loss of the landlord so I find the landlord not entitled to recover the \$800 rental loss claimed for September 2013. I dismiss this portion of his claim.

In respect to the landlord's claim of \$140 for damages, I find insufficient information to prove on a balance of probabilities that these tenants did the damage, that it was beyond reasonable wear and tear and the amount to cure the damage. The landlord provided no condition inspection reports and no invoices and, in fact, has not done the claimed repairs. The tenant denies doing any damage and provides photographs of the condition on move-in and move-out to illustrate this. I dismiss this portion of the landlord's claim.

I find the tenant also entitled to the refund of his security deposit of \$400. I find insufficient evidence as to when the forwarding address was served to the landlord. The tenant was not present to give sworn evidence to service and the landlord denied receiving it. I note the landlord filed his Application on October 24, 2013 after the tenant filed an Application on October 2, 2013 so I find it possible that the landlord did not know the new address until he received the tenant's Application in October. Therefore, I find the doubling provision of section 38 of the Act does not apply.

The tenant also claims as damages a rebate of rent. I find he \*\* moved in July 27, 2013 and paid rent of \$800 for August 2013, he was very limited in laundry facilities and had the thermostat taped off when he needed heat after arriving from a hot country. I also note that although he was provided living accommodation, he did not get what he bargained for; the location was not as represented and was on a very busy street. I find it reasonable that he be granted a rebate of \$200 \*\*for August and \$25.80 for July 2013 (4 days times \$6.45) (total \$225.80)\*\* taking into account all these factors.

**Conclusion:**

The contract or lease is rescinded. I dismiss the application of the landlord in its entirety without leave to reapply and I find he is not entitled to recover filing fees for his application.

I find the tenant entitled to a monetary order as calculated below and to recover filing fees for this application.

Calculation of Monetary Award:

Refund of security deposit (no interest 2013)	400.00
Rebate of rent for misrepresentation & lack of facility **	225.80**
Filing fee	50.00
Monetary Order to Tenant	675.80**

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 08, 2014

**\*\*This Decision is amended pursuant to section 78(1) of the *Residential Tenancy Act* where indicated by \*\* this 12<sup>th</sup> day of February, 2014. Signed:**

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Residential Tenancy Branch