



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on November 20, 2013 to an address provided by the tenant at a previous hearing. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for unpaid rent?

### Background and Evidence

The landlord has provided a copy of the tenancy agreement in evidence which was signed by both parties on July 19, 2012. This agreement indicates that this is a fixed term tenancy which started on August 01, 2012 and was due to end on July 31, 2013. This agreement was in the tenants name only. Rent for this unit was \$1,300.00 per month and was due on the first day of each month in advance.

The landlord submits that after the tenant signed the agreement and paid the first month's rent and a security deposit the tenant asked the landlord if her boyfriend could move into the unit. The landlord did not object initially but required a meeting with this other person so his name could be included on the lease. As the utilities were included in the rent the landlord informed the tenant that the rent would have to increase for another occupant.

After many emails backwards and forwards between the parties the tenant decided not to move into the unit. The landlord testifies that after hearing from the tenant that she was not going to move into the rental unit the landlord continued to inform the tenant that the landlord had not absolved the lease and was still expecting the tenant to fulfill the signed contract. The landlord also reminded the tenant that it was only the tenants name on the signed contract.

The landlord testifies that as the tenant did not move into the unit the tenant breached the terms of the tenancy agreement made on July 19, 2012. The landlord testifies that this unit is normally rented to students and the timing of this is important to advertise the unit for the new academic year. When the tenant did not move into the unit, the landlord re-advertised the unit for rent. The first advert went in on August 21, 2012 and continued until the unit was re-rented on April 01, 2013. The landlord has provided evidence of the advertisements and testifies that these were updated regularly in order to place the advert at the top of the list to gain more attention.

The landlord testifies that as the unit was not re-rented for seven months the tenant remains responsible for the rent for this period. The landlord had originally claimed \$10,400.00 however amends this as an additional month was claimed in error, The landlords seeks to recover \$9,100.00.

### Analysis

The tenant did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords documentary evidence and sworn testimony before me.

I refer the parties to s. 45(2) of the Act which states:

*(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, that rent is payable under the tenancy agreement.*

The landlord has submitted documents in the form of emails between the parties in which the tenant and the tenants boyfriend have argued that because the landlord did not include a clause in the tenancy agreement that stipulated that this is a sole occupancy or that the tenant may not take on either a roommate or a co-tenant then the landlord should not have withheld her permission for the tenant's boyfriend to move into the unit. I have reviewed these arguments and seek to clarify this point for the parties.

The person named on the tenancy agreement is the tenant. If the tenant wants a co-tenant or a roommate then the tenant should request permission from the landlord and the landlord has a right to carry out checks on that person and ask them to co-sign the tenancy agreement if they are going to be residing in the unit in order to protect the rights of all parties concerned. Furthermore I do not find that it would be unreasonable for a landlord to ask for more rent when this was advertised as a single occupancy which included utilities if a second occupant was to move in.

I find the tenant did not finalize getting her boyfriend included on the tenancy agreement as they could not agree on the additional conditions the landlord requested and did not have permission from the landlord for her boyfriend to occupy the unit. Consequently the tenant remained the sole tenant for this unit and as such was still in a position to occupy the unit under the terms of the tenancy agreement. It was the tenant's choice not to do so and therefore the tenant is responsible for meeting the terms of the tenancy agreement with regard to the rent. I find the landlord had a statutory obligation to mitigate any loss by attempting to re-rent the unit as quickly as possible. The landlord placed advertisements to try to do so and I accept that this became increasingly more difficult as the academic year had already started. I am satisfied that the landlord was not able to re-rent the unit until April 01, 2013 and therefore I uphold the landlords claim to recover unpaid rent or a loss of rental income for seven months to an amount of \$9,100.00.

### Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$9,100.00**. The Order must be served on the respondent. Should the respondent fail to comply with the Order, the Order may be enforced through the Provincial Court as an Order of that Court.

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 05, 2014

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Residential Tenancy Branch

