



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR MNSD FF

### Preliminary Issues

Upon review of the Landlord's application for dispute resolution the Landlord listed in the Details of the Dispute that the Tenant gave late notice and they "*Require last month's rent to be paid*".

Based on the aforementioned I find the Landlord had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as she clearly indicated her intention of seeking to recover the payment for rent for a period after the Tenant gave notice to end the tenancy. Therefore, I amend the application to include the request for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement*, pursuant to section 64(3)(c) of the Act.

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for: unpaid rent or utilities; to keep all or part of the security and or pet deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the

testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord proven entitlement to a Monetary Order, pursuant to sections 67 and 7 of the *Residential Tenancy Act*?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on January 1, 2013 and switched to a month to month tenancy after June 30, 2013. The Tenant was required to pay rent of \$900.00 on the first of each month and on January 1, 2013 the Tenant paid \$450.00 as the security deposit.

The Tenant's Advocate/Witness testified that she brought a young mother to view the suite and when she told the Landlord she wanted to rent the unit the Landlord told her that the unit had already been rented.

The Landlord testified that she is seeking to recover rent for November 2013 because the Tenant provided late notice that was verbal and not written. She argued that the Tenant told her on October 1, 2013 that she was ending her tenancy effective October 31, 2013. The Landlord stated that during that conversation she had told the Tenant that if she found someone else to rent the unit she would release the Tenant from having to pay the November 2013 rent.

The Landlord stated that she advertised in the local small town newspaper, after meeting their cut off dates, which also has an on-line presence. She did not advertise on any other on-line websites. The Landlord stated that she had receipts to prove she advertised the unit but she did not submit them into evidence. She did not have the receipts with her so she could not provide testimony as to when the advertisement was placed.

The Landlord confirmed that she met with the young woman and the Advocate/Witness and she did tell the woman that the unit had been rented. The Landlord argued that at the time the young woman viewed the suite the Landlord was waiting to hear back from someone else who was seriously looking at renting the unit. Those people never called back to rent the unit.

The Landlord submitted that she did not want to rent to the young women because she was a first time renter and therefore would not have any references. She indicated that this woman was going to school so she felt she would not be a good fit as a tenant because there are two other suites in this house. The Landlord stated that she had not met with this woman and later said that she attended the unit when the Tenant's Witness brought the women to view the suite. The woman called back later to say she wanted the suite and it was at that time that she told her the suite was rented.

The Landlord clarified that she had not met with this woman to interview her; rather she had a short conversation with her which lead the Landlord to determine that she was not a suitable tenant. The Landlord could not recall the conversation and said that she made her decision not to rent to this tenant based on the fact that she was a first time renter. The Landlord advised that the rental unit remained vacant until two months ago.

The Advocate/Witness said this young woman had had a previous roommate that could provide a reference. Also, she was a young mother of a two year old child, was attending school, and her rent would have been paid by the Ministry. The Advocate/Witness argued that she would have given a reference for this young woman.

The Tenant testified that even if she had given her notice on September 30<sup>th</sup> it would have missed the local paper cut off which was Monday at noon. She said a lot of people came by to view the suite and she worked very hard to find a replacement tenant but the Landlord told her the unit had been re-rented so she stopped looking for another tenant.

In closing, the Landlord testified that she entered into a new tenancy that began March 1, 2014, and she allowed the new tenant to occupy the unit in mid February 2014. She stated the unit remained vacant from November 2013 to mid February 2014. She said that a reference from the Witness would only be a personal reference and not a working or rental reference. She argued that as landlord she needs to make sure the person fits into the rental unit and that she is allowed to make judgement calls.

### Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;

2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Only when the applicant has met the burden of proof for all four criteria will an award be granted for damage or loss.

Section 45 (1) of the Act stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and 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.

In this case the Tenant was required to provide written notice to the Landlord no later than September 30, 2013, if she wished to end her tenancy October 31, 2013. The Tenant provided verbal Notice on October 1 2013, is a breach of section 45 of the Act.

The Landlord submits that she lost rent for November 2013 because the unit was not re-rented until March 1, 2014; and the value of that loss is \$900.00, the monthly rental amount stipulated in the Tenant's tenancy agreement.

The Landlord has indicated that she advertised the unit in the local paper but did not advertise on commonly used internet sites because the paper has an on-line presence. The Landlord was not able to provide testimony as to the date(s) the unit was advertised and did not submit documentary evidence to support she continued to advertise to find a replacement tenant.

The undisputed evidence was that the Landlord entered into a verbal agreement with the Tenant that she would release her from the responsibility of November 2013 rent if she found a suitable tenant. The Tenant and her Advocate/Witness argued that they brought a suitable tenant, a young woman, to the Landlord who wanted to rent the unit, but were told the unit had already been rented.

There is insufficient evidence to support the Landlord actually considered the young women to be a tenant as the Landlord could not recall the details of her conversation with her. That being said the Landlord claims to recall that the young woman told her she was a first time renter, and therefore the Landlord assumed she would not have references.

Based on the above, and notwithstanding the Landlord's argument that she is allowed to make judgment calls, I find the Landlord provided insufficient evidence to prove she did what was reasonable to minimize her loss. I make this finding in part because there is no evidence before me of when the unit was advertised or for how long; there was conflicting evidence regarding whether the proposed tenant had rented in the past; the

Landlord chose not to take the time to conduct a proper interview with young woman; and the Landlord stopped the process of the Tenant and her Advocate seeking a replacement tenant when the Landlord informed them that the unit had been rented.

Based on the foregoing, I find the Landlord provided insufficient evidence to meet all four criteria for the test for damage or loss and her actions of telling people the unit had been re-rented estopped her from seeking to recover any losses that resulted from her actions. Accordingly, I dismiss her claim, without leave to reapply.

The Landlord has not been successful with their application; therefore I decline to award recovery of the filing fee.

### Conclusion

I HEREBY DISMISS The Landlord's claim, without leave to reapply.

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: March 14, 2014

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Residential Tenancy Branch

