



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REALTY EXECUTIVES ECO-WORLD  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** MNR, MNSD, FF

### **Introduction**

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order for loss of income and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

### **Issues to be decided**

Has the landlord established a claim for loss of income and the filing fee? Is the landlord entitled to retain the security deposit?

### **Background and Evidence**

The tenancy started on March 15, 2013, for a fixed term of one year with an effective end date of March 31, 2014. Rent was \$1,250.00 per month due on the first day of the month. Prior to moving in, the tenant paid a security deposit in the amount of \$625.00.

The tenant stated that through the tenancy he found several problems in the rental unit and was told by the manager of the building to contact the original builder, because the building was brand new and the builder was still responsible for any deficiencies. The tenant stated that he had difficulty contacting the builder and could not leave a message because the voice mail box was always full.

The tenant stated that he became increasingly frustrated with the problems inside the unit and on November 12, 2013, he gave the landlord written notice that he would be moving out on December 15, 2013. The landlord stated that she started advertising the availability of the rental unit on December 01, 2013 and found a tenant for February 01, 2014.

The tenant moved out on November 30, 2013 and stated that he returned one week later to pick up his mail and noticed the presence of furniture inside the rental unit. The landlord argued that the new tenant moved in on February 01, 2014.

The landlord filed copies of several emails between the builder, the tenant and the landlord. In an email dated January 08, 2014, the landlord refers to the new tenant in the rental unit. The note does not state when the tenant moved in but confirms that the new tenant was occupying the rental unit on or before January 08, 2014.

The landlord is claiming loss of income for the months of December and January in the total amount of \$2,500.00.

### **Analysis**

The parties were in a fixed term tenancy agreement and the tenant breached this agreement by ending the tenancy prior to the end date as specified in the tenancy agreement. The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement.

As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. In all cases, the landlord's claim is subject to the statutory duty to mitigate the loss by making timely efforts to re-rent the premises at a reasonably economic rent.

In this case the landlord was notified on November 12, 2013 that the unit would be available for December 15, 2013. The landlord did not start advertising until December 01, 2013 which resulted in a claim by the landlord for loss of income for the months of December 2013 and January 2014.

Based on the documents filed into evidence by the landlord, I find that a new tenant occupied the unit on or before January 08, 2014. Therefore the landlord is not entitled to her claim for loss of income for January 2014. By stating that the new tenant moved in on February 01, 2014, the landlord's oral testimony contradicted her own documentary evidence. Therefore I am unable to determine the date of the start of the new tenancy and accordingly I am unable to determine the exact loss of income if any, that the landlord suffered in December 2013.

Based on the above I find that the tenant's notice to end tenancy indicated that the tenancy would end on December 15, 2013 and therefore he is responsible for rent up to this date.

I find that the landlord is not entitled to any loss of income she is claiming for the following reasons:

1. The landlord did not take immediate steps to mitigate her losses. Despite knowing on November 12, 2013 that the tenancy was ending, she waited until December 01, 2013 to start looking for a tenant for December 2013.
2. The landlord provided contradictory testimony regarding the start date of the new tenancy. Her documentary evidence indicated that the tenant had already moved in by January 08, 2013. However she testified that the new tenant moved in on February 01, 2014 and was therefore claiming a loss of income for December 2013 and January 2014

For the above reasons, the landlord has not proven her claim for loss of income but is entitled to rent in the amount of \$625.00 for the period of December 01 to December 15, 2013.

I order that the landlord retain the security deposit of \$625.00 in full satisfaction of the claim. Since the landlord has proven a negligible amount of her claim, she must bear the cost of filing her application.

### **Conclusion**

The landlord may retain the security deposit of \$625.00

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 26, 2014

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Residential Tenancy Branch

