



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes      MND MNSD MNDC FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order and an order allowing retention of the security deposit in partial satisfaction of the claim. The landlord has also requested recovery of the \$50 filing fee from the tenant. Both parties attended the hearing and had an opportunity to be heard.

### Issues

Is the landlord entitled to the requested orders?

### Background and Evidence

This tenancy began on December 1, 2012 and ended on November 30, 2013. The rent was \$2200 per month. A security deposit of \$1100 and a pet damage deposit of \$1100 were paid at the start of the tenancy.

On November 12, 2013 the tenant gave the landlord notice that he would be vacating the rental unit on November 30, 2013.

When the landlord's agent Downtown Suites got the tenant's notice, they advised the landlord that they had received the notice. Ms. Buchanan explained that they are required to advise the owner of the suite when they get a notice before they begin advertising. This is so that the landlord can exercise his right to move into the unit if he so desires. Once the landlord had indicated he did not want to move in, the unit was advertised on the Downtown Suites website and on Craigslist. The advertisements began running on November 18<sup>th</sup>. The first showing was on November 21 but the prospective tenant did not show up. The next showing was on November 27. Four parties attended this showing but only one submitted an application. This applicant's application turned out to be very good and the application was accepted on November 28. The only problem is that the applicant wanted the unit for January 1<sup>st</sup> rather than December 1<sup>st</sup>. Ms. Buchanan believed it was prudent to accept this application due to

the late time in the month, the time of year (December is their slowest month) and the fact that this rental unit is difficult to rent because it is a very large two bedroom with no view and no balcony and faces the street.

For his part, the tenant acknowledged that his notice was late but felt that the landlord could have done a better job of re-renting the unit for December. The tenant pointed out that the landlord only advertised in two places and failed to post a notice in the P1 or main floor lobbies, the local newspapers or Kijiji. The tenant also believes that the landlord should not have accepted the application on the 28<sup>th</sup> because they likely would have got someone for December 1<sup>st</sup> if they had just waited another two days.

### Analysis

The landlord has made a monetary claim against the tenant for unpaid rent for December in the amount of \$2200. The landlord makes this claim on the basis of the tenant's late notice.

There is no dispute in this case as to whether the tenant gave proper notice. The notice was late. To be proper notice for November 30, it should have been given on October 31, 2013.

The tenant has argued however, that the landlord is not entitled to make this claim because their efforts to mitigate were inadequate.

In this regard, Section 7(2) of the Act states, in part, as follows:

#### **Liability for not complying with this Act or a tenancy agreement**

7 (2) A landlord ...who claims compensation for ...loss that results from the other's non-compliance with this Act... must do whatever is reasonable to minimize the damage or loss.

In the present case, the tenant has argued that the amount of advertising done by the landlord was insufficient and that they jumped the gun and rented it out on November 28<sup>th</sup> instead of waiting just a couple more days. He believes they would very likely have got a tenant for December 1 if they had just waited.

With all due respect to the tenant, I find that the landlord took reasonable steps to minimize their loss as required by the Act. I do not think it would be reasonable to expect the landlord to reject an excellent application for January 1 in the hope that they might get someone for December 1 with only two days left in the month. In making this determination I am influenced by the time of year and the location and nature of the unit.

In the result, I am satisfied that the landlord has established its monetary claim of \$2200.

I am also satisfied, given this outcome, that the landlord is entitled to recover its \$50 filing fee from the tenant.

### Conclusion

I find that the landlord has established a total monetary claim of \$2250 comprised of \$2200 in unpaid rent and the \$50 fee paid by the landlord for this application. I therefore order that the landlord retain the security and pet damage deposits of \$2200 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$50. This order may be filed in the Small Claims Court and enforced 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: April 01, 2014

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Residential Tenancy Branch

