



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD

### Introduction

This hearing dealt with an application by the landlord for a monetary order for unpaid rent.

Both the landlord's agent and the tenant attended the teleconference hearing and gave evidence. The tenant was assisted by a translator.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

### Background and Evidence

A copy of the tenancy agreement signed by the parties was put into evidence. The tenancy agreement indicates the tenancy started July 17, 2013 and was for a fixed term ending June 30, 2014. The tenant is obligated to pay \$2,700.00 rent monthly in advance on the first day of the month. The tenant also paid a security deposit of \$1,350.00.

The landlord gave evidence that the tenant gave notice verbally on approximately December 16 or 17, 2013 that she would be moving out December 20, 2013. The landlord gave evidence that they had not found suitable new tenants by the date of the hearing. The landlord claims losses for January, February, and March 2014 of \$2,700.00 per month based on the tenant vacating before the end of the fixed term.

The landlord gave evidence that he placed an advertisement for a new tenant immediately after the tenant gave notice. The landlord submitted a copy of a printout from the classified ad website "Craigslist" showing an ad dated December 17, 2013 advertising the rental property as available immediately for \$2,700.00 per month.

The landlord gave evidence that he suggested to the tenant that she advertise as well to help find a new tenant.

The landlord's evidence is that he has been advertising continuously for a new tenant. In addition to Craigslist, the landlord advertises in the Richmond News and in a local Chinese language newspaper. Asked if he is aware of any factors that might make the rental property difficult to rent, the landlord noted the weather is cold and rainy December through March and there tends to be more activity in the market in April.

Asked whether the landlord considered reducing the rent to find a new tenant, the landlord said that the owner does not wish to reduce the rent.

The tenant's evidence is that she gave notice to the landlord on about December 10, 2013. She was expecting to share the house with a co-tenant but the co-tenant did not move in and she was unable to afford the house on her own.

The tenant's evidence is that she gave the landlord \$250.00 cash for cleaning on the day they completed the move-out inspection. She also told the landlord he could retain the security deposit. The landlord's evidence is that the \$250.00 cash went to the cleaning contractor for cleaning services because the tenant did not finish cleaning the house.

Asked whether the tenant was aware of any factors that might make the house difficult to rent, the tenant said the house does not smell right and may be too expensive.

The landlord's agent gave evidence that the rental property is a 15 – 20 year old house in "really good condition" in a good location. He does not think the rent of \$2,700.00 is too high. His evidence is that his company manages another house which rents for \$2,500.00 and the rental property in this application is nicer, newer, and has high ceilings. The landlord denies that the rental unit does not smell right.

There is a clause in the tenancy agreement dealing with early termination of the lease, however the landlord states he is not relying on that clause. Instead, he claims actual losses of \$8,100.00 (three months' rent).

### Analysis

According to Section 45(2), a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that:

... (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and ...

According to Residential Tenancy Guideline 30. Fixed Term Tenancies: “During a fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties.”

Pursuant to Section 53, if a tenant purports to give notice effective on a date prior to the date specified as the end of the fixed term, the effective date of the notice is deemed to be the end of the fixed term. Accordingly, the effective date of the tenant’s notice in this application is June 30, 2014. For that reason, the tenant is responsible to pay rent until that date, subject to the landlord’s responsibility to mitigate his losses.

In this case, I find the landlord took appropriate steps to mitigate his losses by immediately and continuously advertising the house to prospective tenants in a variety of media. However, I find these steps were only sufficient for the first two months the house was vacant. When he did not find a suitable tenant after advertising for two months at the original rental amount of \$2,700.00, the landlord could have offered the house at a lower rent. Since he failed to reduce the rent after two months in order to find a new tenant, I find the landlord failed to mitigate his losses after February 28, 2014 and I dismiss his claim for compensation for losses after that date.

The amount due the landlord is \$5,400.00 for rent for January and February 2014. I order that the landlord retain the security deposit of \$1,350.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$4,050.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### Conclusion

I grant the landlord a monetary order for \$4,050.00. The landlord is also entitled to retain the security deposit.

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 04, 2014

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Residential Tenancy Branch

