



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 11:12 a.m. in order to enable him to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord's agent/spouse (the agent) testified that he sent the tenant a copy of the landlord's dispute resolution hearing package by registered mail on January 10, 2014. The landlord entered into written evidence a copy of the Canada Post Customer Receipt containing the Tracking Numbers for the registered mailing of the hearing package to the tenant on January 10, 2014, and a copy of the landlord's written evidence package sent to the tenant by registered mail on April 11, 2014. The agent testified that the only forwarding address provided to the landlord by the tenant was provided in November 2013. This was the same address the landlord used for mailing the hearing and evidence packages to the tenant. Based on the evidence submitted by the landlord and in accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with the above packages on the fifth day after their registered mailing.

Prior to the hearing, the landlord reduced the amount of her requested monetary award from \$2,400.00 to \$2,320.00, to reflect the correct amount of the losses she said she sustained as a result of this tenancy.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This one-year fixed term tenancy commenced on September 1, 2013. Monthly rent was set at \$1,985.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$992.50 security deposit, paid on or about August 29, 2013.

On November 30, 2013, the tenant sent the landlord a written notice to end this tenancy on December 31, 2013. The landlord and agent provided sworn testimony and written evidence that the tenant told them that he had been attempting to sublet the rental unit for a couple of weeks with no success.

Since it is difficult to locate tenants at that time of year, the landlord reduced the asking rent for the rental unit to \$1,695.00. She was able to locate a new tenant who agreed to enter into an 8-month fixed term tenancy agreement commencing on January 1, 2014, and ending at the previously scheduled termination date for the tenancy, August 31, 2014. The landlord explained that this rental unit is usually rented to university students who enter into one-year fixed term tenancies to coincide with the start of their academic year. The landlord entered into written evidence a copy of the 8-month fixed term tenancy agreement with the new tenant for a reduced monthly rent of \$1,695.00, payable on the first of each month.

The landlord's revised application for a monetary award of \$2,320.00 was for the \$295.00 monthly loss incurred by the landlord for the 8 remaining months of the original fixed term tenancy agreement with the tenant.

Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. I find that the tenant was in breach of his fixed term tenancy agreement because he vacated the rental premises prior to the August 31, 2013 date specified in that agreement. As such, the landlord is entitled to compensation for losses she incurred as a result of the tenant's failure to comply with the terms of their tenancy agreement and the *Act*.

There is undisputed evidence that the tenant did not pay any rent after December 31, 2013, the date he ended his tenancy. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises for the remainder of this tenancy. In fact, the landlord was successful in locating a new tenant who assumed the remaining term of the previous tenancy agreement, albeit at a reduced monthly rent. Under these circumstances and based on the landlord's undisputed evidence, I am satisfied that the landlord discharged her duty under section 7(2) of the *Act* to minimize the loss of rent she incurred to the extent possible, given the timing of the tenant's decision to end his tenancy early.

For these reasons, I find that the landlord has demonstrated that she incurred losses arising out of the tenant's failure to abide by the terms of his fixed term tenancy agreement. I issue a monetary award to the landlord in the amount of \$2,320.00, reflecting the landlord's loss of \$295.00 in monthly rent for the period from January 1, 2014 until August 31, 2014.

I allow the landlord to retain the tenant's security deposit, plus applicable interest, in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. As the landlord has been successful in this application, I allow her to recover her \$50.00 filing fee from the tenant.

### Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover loss of rent and his filing fee, and to retain the tenant's security deposit:

<b>Item</b>	<b>Amount</b>
Losses Arising out of this Tenancy (8 months @ \$295.00 per month = \$2,320.00)	\$2,320.00
Less Security Deposit	-992.50
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$1,377.50</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these

Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 23, 2014

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Residential Tenancy Branch

