



# 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 for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and her agent and the tenant.

At the outset of the hearing I clarified the amount of monetary order sought by the landlord. The landlord confirmed that she was seeking compensation for lost revenue for the month of February 2014 (\$800.00) less the security deposit (\$400.00) for a total monetary order of \$400.00 plus the filing fee.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 16, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on January 3, 2014 for a 4 month fixed term tenancy beginning on February 1, 2014 for a monthly rent of \$800.00 due on the 1<sup>st</sup> of each month and a security deposit of \$400.00 paid;
- A copy of a letter from the tenant dated January 17, 2014 providing the landlord with her forwarding address for the return of her security deposit.

The landlord submits the tenant paid the security deposit and completed all paperwork on January 3, 2014. The landlord further submits that on January 14, 2014 the tenant informed the landlord that she no longer wanted to rent the rental unit. The landlord testified that they have ongoing advertising in local papers and online and that she was unable to rent the unit to a new tenant until March 1, 2014.

The tenant submits that she had originally agreed to rent the rental unit because she had just obtained employment and wanted to move closer to her son. She testified that one week after she agreed to rent the unit she lost her job and no longer wanted to take the unit. She states that she informed the landlord as soon as possible and that she never moved in to the rental unit.

### Analysis

To be successful in a claim for loss or damages resulting from a violation of the Act, regulation or tenancy agreement the party making the claim has the burden of providing sufficient evidence to establish:

1. That damage or loss exists;
2. That the damage or loss has resulted from a violation of the Act, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. The steps taken, if any to mitigate the damage or loss.

Section 16 of the *Act* states the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

In the case before, I accept the parties entered into a tenancy agreement on January 3, 2014 that was to begin on February 1, 2014 and as such, pursuant to Section 16, if the tenant wanted to end the tenancy she was required to follow the applicable legislation to end the tenancy in accordance with the *Act*.

Section 45(2) of the *Act* stipulates that a tenant may end a fixed term tenancy by giving the landlord a notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

As there is no evidence before me that the tenant had identified to the landlord that the landlord had breached a material term of the tenancy and provided the landlord with a reasonable time to correct the breach I find the tenant cannot rely upon Section 45(3) to end the tenancy.

Therefore, to be compliant with Section 45(2) the tenant would have had to have provided the landlord with a notice to end tenancy that would take effect no earlier than

May 31, 2014 and the tenant remains responsible for the payment of rent for duration of the tenancy subject only to the landlord's obligations to mitigate any damage or loss.

I accept, based on the landlord's undisputed testimony, that the landlord took reasonable steps to mitigate the lost potential revenue as the tenant would have been responsible for the full 4 months' worth of rent had the landlord failed to obtain a new tenant.

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$850.00** comprised of \$800.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$400.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$450.00**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: May 16, 2014

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Residential Tenancy Branch

