



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNR, MNDC

### Introduction

This is an application for a Monetary Order for \$3390.00 and a request to retain the full security deposit of \$845.00 towards the claim.

Some written arguments have been submitted by the parties prior to the hearing.

I have given the parties the opportunity to present all relevant evidence, and to give oral testimony.

All testimony was taken under affirmation.

### Issue(s) to be Decided

Has the applicant established a monetary claim against the respondent in the amount of \$3390.00?

### Background and Evidence

Both the applicant and respondents agree that:

- This tenancy began on September 1, 2013 with the monthly rent of \$1695.00.

- The tenant paid a security deposit of \$845.00.
- On December 28, 2013 the tenant gave the landlord written notice that he would be vacating the rental unit.
- The tenant vacated the rental unit on January 31, 2014.

The applicant testified that:

- The tenant agreed to a fixed term tenancy with an end of tenancy date of July 31, 2014.
- The tenant subsequently gave notice in November 2013 stating that they would be vacating the rental unit on January 31, 2014
- The tenants vacated the rental unit on January 31, 2014 and although they attempted to re-rent the unit they were unable to rent it until mid-March 2014.
- As a result of the tenants failing to stay to the end of the fixed term they lost the full rental revenue for the month of February 2014, and half the rental revenue for the month of March 2014.
- He is therefore requesting a Monetary Order as follows:

February 2014 lost rental revenue	\$1695.00
March 2014 lost rental revenue	\$847.50
Total	\$2542.50

He is further requesting an Order allowing him to keep the full security deposit towards the claim, and is requesting that a Monetary Order be issued for the difference.

The respondent testified that:

- This is not a fixed term tenancy agreement. On the written tenancy agreement the landlord did not check off the box stating that it was a fixed term agreement, nor did he fill in the box stating the length of tenancy.

- The only thing the landlord did fill out was that the tenancy would be ending on July 31, 2014.
- There is nothing in the agreement that states that the tenancy cannot end before July 31, 2014 however.
- Therefore since this is not a fixed term tenancy agreement, they gave the one-month clear Notice to End Tenancy required for a month-to-month tenancy agreement.

### Analysis

It is my finding that the landlord has not met the burden of proving that this is a fixed term tenancy agreement.

It is the landlord's responsibility to ensure that the tenancy agreement is properly completed, and had the landlord intended this to be a fixed term tenancy agreement he should have checked off the box that stated that the agreement was for a fixed term, and filled in length of that term.

In this case the landlord did neither of the above, and only filled out a date by which the tenancy must end; however there is nothing in the agreement that states that the tenancy cannot end prior to that date.

The landlord has argued that the tenant verbally agreed to a fixed term tenancy, however the tenant denies any such agreement and has argued that the only reason an end of tenancy date was put on the agreement was to ensure that the tenancy would not go any longer than July 31, 2014.

The burden of proving a claim lies with the person making the claim, and in this case since it is just the landlord's word against that of the tenant, the landlord has not met the burden of proving that this was a fixed term tenancy.

Therefore since the landlord has not met the burden of proving that this is a fixed term tenancy, this tenancy is considered a month-to-month tenancy, and the tenant gave the required one clear month Notice to End Tenancy for a month-to-month tenancy.

I therefore will not allow the landlords claim for lost rental revenue.

### Conclusion

This monetary claim is dismissed in full without leave to reapply, and if the tenant supplies the landlord with a forwarding address in writing, the landlord must return the tenants security deposit, in full, within 15 days of receipt of that forwarding address.

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: June 10, 2014

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Residential Tenancy Branch

