



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MNSD, MNDC

### Introduction

This is an application for a Monetary Order for \$593.25 and a request to retain a portion of the security deposit towards the claim.

Some documentary evidence and 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, and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

Has the applicant established a monetary claim against the respondent and if so in what amount.

## Background and Evidence

The applicant testified that:

- This tenancy began on June 1, 2013, as a fixed term tenancy, with an expiry date of May 31, 2014.
- The monthly rent was \$1050.00 and the security deposits collected totaled \$675.00.
- This tenancy agreement also had a clause 3 that reads as follows:
  - 3-in consideration of the landlords signing a fixed term tenancy agreement, the tenant hereby agrees that in the event that the tenant terminates the tenancy agreement earlier than the fixed term, the tenant is responsible for
    - the re-renting fee payable to the property management company equals to one half months of rent plus GST.
    - the advertising costs to re-rent the property, credit checks, plus applicable taxes.
    - the lost rent suffered by the landlord until the date when the property is rented to a new tenant, and any lost rent in the event and the term of the new tenant is shorter than the original term or the rent is lower than the original term.
- In this case the tenant breached the tenancy agreement and vacated the rental unit on February 1, 2014.
- They were able to re-rent the unit for February 2014, and therefore lost no rental revenue however they are still claiming the re-renting fee and the cost of doing a credit check.
- It was the respondent that found the new tenant and requested that the tenancy be assigned to him, however we still have significant costs for taking

applications, checking references, doing credit checks, doing extra move in and move out inspections, and drafting a new tenancy agreement.

- There was only four months left in the tenancy agreement and the landlord did not want to sign a four-month agreement, preferring to have a one-year agreement.
- The tenant did not want to sign a one-year agreement, and therefore they both compromised and signed a six-month agreement with an option to extend the agreement an additional six months.
- It is her believe therefore that the tenant should still be liable for the following costs:

Re-Renting fee	\$525.00
GST on re-renting fee	\$26.25
Cost of credit check	\$42.00
Filing fee	\$50.00
Total	\$643.25

The respondent testified that:

- The landlord agreed to allow him to assign the tenancy agreement, and therefore he found a new tenant to assign the tenancy to.
- The landlord accepted the new tenant and in an e-mail from the landlord dated January 28, 2014 she stated that the new tenant was taking over the four-month lease.
- It is his understanding that the landlord is not allowed to charge any fees when a tenancy is assigned to a new tenant.
- He therefore believes that the landlord should be returning his full security deposit.

### Analysis

It is my finding that the landlord has not established a claim against the tenant.

The tenant was in a fixed term tenancy agreement with an expiry date of May 31, 2014, and the tenant did vacate the rental unit prior to the end of that term; however the landlord agreed to allow the tenant to assign the tenancy.

In this case the tenant found a tenant to replace him in the tenancy agreement for the last four months of the term, and the landlord agreed to assign the tenancy to that new tenant.

The landlord has argued that this was not an assignment as the new tenant signed a six-month agreement, and not just the remaining four months period; however it is my finding that if the landlord chose to sign a longer term tenancy agreement that it was not landlords choice, and that does not mean that the tenancy was not assigned.

Therefore since this tenancy was a signed to a new tenant for the remaining four months of the term, the tenancy technically was not terminated earlier than the end of the fixed term, and therefore the tenant is not liable for the re-renting fee or credit checks.

I understand that the landlord may have had some costs related to the reassignment of the tenancy, however section 34(3) of the Residential Tenancy Act states:

**34**(3) A landlord must not charge a tenant anything for considering, investigating or consenting to an assignment or sublease under this section.

I therefore will not be allowing the landlords claim for re-renting fees or credit checks.

Conclusion

The landlord's application is dismissed in full without leave to reapply, and I have issued an Order for the landlord to return the tenants full security deposit of \$675.00.

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 16, 2014

---

Residential Tenancy Branch

