



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Corrected Decision**

### **Dispute Codes:**

MND, MNR, MNSD, MNDC , FF

### **Introduction**

This Dispute Resolution hearing was convened to deal with an application by the landlord for a monetary claim for \$10,561.40 including \$6,900.00 for loss of revenue and a portion of the liquidated damages representing the actual cost of re-leasing in the amount of \$3,622.50, the estimated cost of 2 credit reports for the new tenants for \$38.50 dated damages for liquidated damages and \$100.00 reimbursement for the filing fee.

Despite being served by registered mail sent on May 10, 2014, as confirmed by the Canada Post Tracking receipts, the tenants did not appear and the hearing proceeded in the absence of the tenants.

### **Issues to be Decided**

Is the landlord entitled to monetary compensation under section 67 of the Act?

### **Background and Evidence**

The landlord testified that the tenant signed a tenancy agreement on April 14, 2014, and the tenancy was to begin on May 1, 2014 as a one-year fixed term with rent set at \$6,900.00 per month. The tenancy agreement shows that a security deposit of \$3,450.00 was paid on April 15, 2014.

The landlord testified that the tenant gave notice to terminate the tenancy on April 23, 2014, before moving into the unit, despite having already signed the fixed term tenancy agreement committing the tenant to fulfill the contract.

The landlord testified that advertisements to re-rent the unit were commenced immediately but it was too late to find new tenants to re-rent the unit for the month of May 2014 and the landlord, incurred a loss of \$6,900.00 rent. The landlord testified that the tenancy agreement signed by the tenants contained a liquidated damages clause requiring the tenant to pay the actual costs of re-renting the unit, up to

\$6,900.00, if the contract was terminated by the tenant prior to the expiry date. A copy of the agreement signed by all parties is in evidence and verifies this liquidated damages clause.

The landlord is seeking compensation of \$10,561.40, including \$6,900.00 loss of rent for the month of May 2014, agent fees for re-renting the unit in the amount of \$3,622.50, credit report costs of \$38.90, plus the \$100.00 filing fee.

### **Analysis**

The tenant did not attend the hearing and no evidence was submitted by the tenant.

Section 6 of the Act states that a party can make an application for dispute resolution seeking enforcement of the rights, obligations and prohibitions established under the Act or the tenancy agreement. (my emphasis)

Section 58 of the Act also states that a landlord or tenant may make an application for dispute resolution in relation to a conflict dealing with: (a) rights, obligations and prohibitions under the Act; OR (b) *rights and obligations under the terms of a tenancy agreement*. (my emphasis).

Section 16 of the Act states that 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. (my emphasis)

Based on the above, I find that, because there is an enforceable term in the tenancy agreement imposing liquidated damages for the cost of re-renting, the tenant ending the contract early must compensate the landlord the agent fees of \$3,622.50 for re-rental costs and \$38.90 for credit report costs pursuant to the terms of the agreement.

In regard to the landlord's claim for loss of revenue for the month of May 2014, I find that an Applicant's right to claim damages from another party is dealt with under section 7 of the Act. This provision states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants an Arbitrator the authority to determine the amount and to order payment under these circumstances.

I find that the landlord incurred a loss of revenue in the amount of \$6,900.00 as a direct result of the tenant defaulting on the contract and therefore, under the Act, the landlord is entitled to be compensated this amount by the tenant.

Based on the evidence before me, I find that the landlord is entitled to total monetary compensation of \$10,661.40 comprised of \$6,900.00 loss of rent for May 2014,

\$3,622.50 for the agent's re-rental charges, \$38.90 for credit report costs and the \$100.00 cost of the application.

**Section 72 of the Act provides that if the arbitrator orders a party to a dispute resolution proceeding to pay any amount to the other the amount may be deducted:**

**(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and**

**(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.**

**However, in the case before me, the landlord did not request, as part of the application filed on May 7, 2014, that they be allowed to keep the tenant's \$3,450.00 security deposit in partial satisfaction of their monetary claim. Therefore I make no findings or orders relating to the disposition of the tenant's \$3,450.00 security deposit, except that it must be administered in accordance with section 38 of the Act.**

~~I order that the landlord retain the tenant's security deposit of \$3,450.00 in partial satisfaction of the claim, leaving \$7,211.40 still owed to the landlord.~~

I hereby grant the landlord a monetary order in the amount of ~~\$7,211.50~~ **\$10,661.40**. This order must be served on the tenant and can be enforced through small Claims Court.

### **Conclusion**

The landlord is successful in the application and is granted a monetary order for liquidated damages and loss of one month rent due to the tenant's default of the fixed term tenancy agreement.

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: September 09, 2014

**Corrected: October 15, 2014**

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Residential Tenancy Branch

