



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNSD FF

### **Introduction**

This hearing was convened in response to an application by the landlord filed May 16, 2014 under *the Residential Tenancy Act* (the Act) for loss of revenue in the amount of \$1200.00 and to retain the security deposit in partial satisfaction of the loss, and to recover the filing fee.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. The tenant acknowledged receiving the evidence of the landlord. The tenant acknowledges not having submitted evidence of their own. None the less, the landlord and tenant were each given opportunity to orally provide their respective evidence and were given opportunity to respond to it. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

### **Issue(s) to be Decided**

Is the landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

The undisputed relevant testimony in this matter is as follows. The tenancy started March 01, 2012, and ended January 31, 2014; however, part of the tenant's belongings remained in the unit until February 03, 2014. Under the tenancy agreement rent in the amount of \$1200.00 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit and pet damage deposit from the tenant in the sum amount of \$1200.00, of which the landlord retains \$600.00 in trust – having returned \$600.00 and filing this application for the balance upon receiving the tenant's forwarding address in writing. The parties agree that on January 12, 2014 the tenant sent the landlord an e-mail informing the landlord they were vacating at month's end. Despite the nature and timing of the tenant's notification, the landlord acted on the tenant's e-mail and soon after immediately placed an on-line

advertisement to re-rent the unit for February 01, 2014, which they submitted into evidence.

The landlord testified they received some enquiries to their on-line advertisement but that none of them were either suitable or requests/applications for February 01, 2014 occupancy, and that most were for March 01, 2014 or later.

The tenant argues that they do not believe the landlord could not find a tenant for February 01, 2014 and that the landlord may have compromised their ability to re-rent the unit by charging an additional \$25.00 for rent. The parties agree the tenant in no way impeded the landlord's efforts to try and re-rent the unit.

### **Analysis**

On preponderance of all the *relevant* evidence in this matter, I have reached a Decision upon the following findings.

I find the tenant ended the tenancy without providing the landlord with the prescribed Notice to End the tenancy in accordance with **Section 45** of the Act, which in relevant part states as follows,

#### **Tenant's Notice**

**45** (2) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

I find the tenant failed to provide the landlord with legal notice under the Act to end the tenancy as required by Section 45. However, I find that while the Act requires tenants to give one *full month's* notice that they are vacating, the Act does not automatically entitle the landlord to loss of revenue for failing to do so. That is, there is no provision in the Act whereby tenants who fail to give adequate notice will be automatically held liable for loss of rent revenue for the month following the month in which they give their notice. However, **Section 7** of the Act does provide as follows:

## 7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

As a result of the tenant's non-compliance with the tenancy agreement or the Act, I accept the landlord's evidence that under the circumstances with which they were presented the landlord took immediate steps and did what was *reasonable* to minimize and avert future losses of revenue as of February 01, 2014 - for themselves and the tenant – although to no avail. On all the relevant evidence provided in this matter, I find the landlord has met the above test for loss. I find the landlord has provided sufficient evidence to support their claim and as a result are owed compensation for loss of revenue in the amount equivalent to one month's rent of **\$1200.00**. The landlord is also entitled to recovery of the \$50.00 filing fee. The security deposit being held will be off-set from the award made herein. ***Calculation for Monetary Order:***

Loss of revenue for February 2014	\$1200.00
Filing fee	50.00
<i>Less applicable security deposit</i>	<i>-600.00</i>
<b>Total monetary Order to landlord</b>	<b>\$650.00</b>

## **Conclusion**

**I Order** that the landlord may retain the security deposit in the amount of \$600.00 in partial satisfaction of the claim and **I grant** the landlord an Order under Section 67 of the Act for the balance due of **\$650.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**This Decision is final and binding on both parties.**

*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 23, 2014

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Residential Tenancy Branch

