



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC

### 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.

The landlord testified each tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* personally on May 16, 2014 in accordance with Section 89. The landlord testified that when she handed the packages to the tenants they went directly to a garbage can and through the packages into the garbage.

Based on the testimony of the landlord, I find that both tenants have been sufficiently served with the documents pursuant to the *Act*. I also find that the tenants took deliberate action to avoid service.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for damage to the rental unit; and for all or part of the security deposit, pursuant to Sections 37, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on December 10, 2013 for a 6 month and 22 day fixed term tenancy beginning on December 10, 2013 for a monthly rent of \$700.00 due on the 1<sup>st</sup> of each month with a security deposit of \$300.00 paid. The tenancy agreement stipulates the end day of the fixed term was July 1, 2014.

The landlord submits the tenants failed to pay the full rent for the month of April 2014 and that they moved out sometime in the early part of May 2014. The landlord seeks unpaid rent for the month of April 2014 in the amount of \$350.00 and lost revenue for the months of May, June, and July 2014.

The landlord submits the rental unit was not re-rented until July 15, 2014 and that they had been advertising the availability on local websites and the local paper and do so on a continuing basis.

### Analysis

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 tenants provided the landlord with a notice under Section 45(3) I find the earliest the tenants could end the tenancy was July 1, 2014 and as such, the tenants remain responsible for rent and lost revenue suffered by the landlord for the remaining period of the tenancy agreement subject to the landlord's obligation to mitigate her losses.

While the landlord has claimed for rent for part of April, all of May, June, and July 2014 I note that the tenancy agreement stipulates the tenancy would end on July 1, 2014 and as such the landlord is not entitled to any rent for the month of July 2014.

I am satisfied that the landlord took all reasonable steps to re-rent the unit prior to the end of the fixed term but that she was unsuccessful in doing so.

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,750.00** comprised of rent owed. I order the landlord may deduct the

security deposit held in the amount of \$300.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,450.00**.

This order must be served on the tenants. If the tenants fail 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: September 16, 2014

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Residential Tenancy Branch