



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, O, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an "other" remedy; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The landlord's application for an "other" remedy is to recover the move-out fee charged to the landlord by the building's strata. As this can be considered within the landlord's claim for compensation for damage or loss under the Act, I prefer to consider it there.

The tenant did not attend this hearing, although I waited until 1122 in order to enable the tenant to connect with this teleconference hearing scheduled for 1100. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that he served the tenant with the dispute resolution package on 17 December 2014 by registered mail. The landlord provided me with a Canada Post tracking number that showed the same. On the basis of this evidence, I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

*Preliminary Issue – Landlord's Request to Amend Application*

At the hearing the landlord asked to amend his application to reduce his rental loss amount for January from \$1,390.00 to \$695.00 as the landlord has been able to re-rent the unit commencing 15 January 2015. I allowed this amendment as there is obviously no prejudice to the tenant in doing so.

*Preliminary Issue – Evidence Received After Hearing Concluded*

The landlord stated that he provided a copy of the tenancy agreement to the Residential Tenancy Branch. I could not locate a copy of the tenancy agreement in the file. As the tenant has a copy of this agreement and it provides evidence of which the tenant ought to have known there is no undue prejudice to the tenant in my consideration of this evidence. I allowed the landlord to submit a copy of the tenancy agreement for consideration after the end of the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of the landlord's submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 June 2014. The landlord and tenant signed a tenancy agreement that was dated 17 May 2014. Monthly rent of \$1,390.00 was due on the first. The tenant remitted to the landlord a security deposit of \$695.00 on 17 May 2014. The tenancy was a fixed-term tenancy of twelve months to be followed by a month-to-month tenancy. The tenancy included a one-page addendum that set out, among other items, that the tenant would be responsible to pay any move-in and move-out fees.

The landlord provided me electronic mail correspondence between the tenant and the landlord. On 15 December 2014, the tenant provides notice to the landlord by email that he was vacating the rental unit as of 31 December 2014. The landlord provided me with a copy of his internet advertisement, which was posted on 15 December 2014.

The landlord testified that he was able to re-rent the unit for a tenancy that began 15 January 2015.

The landlord testified that he was charged a \$200.00 move-out fee by the strata.

The landlord seeks a total monetary order of \$2,335.00:

Item	Amount
Unpaid December Rent	\$1,390.00
January Rental Loss	695.00
Strata Move-Out Fee	200.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order Sought</b>	<b>\$2,335.00</b>

### Analysis

I find, on a balance of probabilities, that the tenant did not pay his December rent. I find that the landlord is entitled to this amount.

The tenant and landlord entered into a fixed-term tenancy. Where a tenant leaves a fixed-term tenancy, the tenant is liable to the landlord for any rental losses the landlord may incur. This liability is subject to the landlord's obligation to mitigate his damages. I find that the landlord incurred rental losses of \$695.00. The landlord provided evidence of his mitigation by providing me with a copy of his online advertisement. Although after the fact, I find that the landlord's ability to re-rent the rental unit within one month of the date of the tenant's notice to be evidence that he did actually mitigate his loss. I find that the landlord is entitled to recover \$695.00 from the tenant as his rental loss.

The landlord provided me with a copy of his tenancy agreement with the tenant that shows that the tenant agreed to pay the strata's move-out fees. Although I was not provided with documentary evidence regarding the actual fee charged by the strata, I accept the landlord's testimony as sufficient evidence that the landlord did, in fact, incur a \$200.00 expense. I do so as I found the landlord to be highly credible and consistent in providing his oral testimony. In particular, the landlord was extremely forthright. I find that the landlord is entitled to recover \$200.00 from the tenant.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

The landlord testified that he continued to hold the tenant's \$695.00 security deposit, plus interest, paid on 17 May 2014. Over that period, no interest is payable. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,640.00 under the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid December Rent	\$1,390.00
January Rental Loss	695.00
Strata Move-Out Fee	200.00
Recovery of Filing Fee for this Application	50.00
Offset Security Deposit Amount	-695.00
<b>Total Monetary Order</b>	<b>\$1,640.00</b>

The landlord is provided with this order in the above terms and the tenant must be served with this order as soon as possible. Should the tenant fail to comply with these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: January 16, 2015

---

Residential Tenancy Branch

