



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF, OPB

### Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing. Both parties confirmed that they had exchanged evidence in accordance with Section 89 of the Act. Both parties gave affirmed evidence.

### Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent and loss of income?

### Background and Evidence

The landlord gave the following testimony:

The tenancy began on or about December 1, 2014 and was to be for a fixed term until August 30, 2015. Rent in the amount of 2500.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$1250.00. The landlord stated that on December 10, 2014 the tenants gave him notice that they would be moving out on December 14, 2014.

The landlord stated that the tenants never gave him a reason as to why they were moving out. The landlord stated that as of today's hearing the house is still empty. The landlord stated that he has listed advertisements on the internet, informed other property managers that he has a vacancy and posted a sign on the property in attempts to mitigate his losses. The landlord stated that he is seeking to recover the loss of revenue for the months of January – March in the amount of \$7500.00 based on the tenants "breaking the lease".

The tenants gave the following testimony:

The tenants stated that ongoing discussions were taking place in regards to the terms of the tenancy. The tenants stated that they had a friend look at the place on their behalf and that they signed a fixed term agreement to secure it. The tenants stated upon moving in they realized the property didn't meet their needs and that they needed to move out. The tenants stated that they verbally told the landlord that they would be moving out on November 30, 2014 and that they couldn't track him down until December 10, 2014 to give him written notice.

### Analysis

As the tenants have vacated the property, the landlord no longer requires an order of possession; accordingly I dismiss that portion of the landlords' application. In the tenants own testimony they acknowledged that they did not provide written notice to the landlord until December 10, 2014. Section 45 of the Act addresses this as follows:

#### **Tenant's notice**

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

(c) 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.

In addition Section 52 of the Act then applies as follows:

#### **Form and content of notice to end tenancy**

**52** In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

As the tenant did not give the appropriate notice to end the tenancy I find that the landlord is entitled to the loss of revenue for the month of January in the amount of \$2500.00.

The landlord was seeking further loss of revenue for the months of February and March however the landlord did not satisfy me that he had taken all reasonable steps to mitigate his losses. In addition, the landlord did not submit copies of any advertisements beyond December 2014 nor did he indicate a price adjustment to try to minimize the loss. Based on the insufficient evidence before me I dismiss the landlords' application for loss of revenue for February and March.

As for the monetary order, I find that the landlord has established a claim for \$2500.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the \$1250.00 security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1300.00.

This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The landlord is granted an order of possession and a monetary order for \$1300.00. The landlord may retain the security deposit.

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: March 18, 2015

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Residential Tenancy Branch

