



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNDC, FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order. Both parties participated in the conference call hearing and had opportunity to be heard.

### Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The parties agreed that the tenancy began on July 1, 2013 and ended on September 1, 2013. They further agreed that rent was set at \$750.00 per month.

The landlord testified that the parties entered into a verbal tenancy agreement in which the tenants initially agreed to a one year fixed term agreement, but then requested a month to month agreement to which the landlord agreed. The landlord stated that approximately 3 weeks before the tenancy agreement was to begin, he advised the tenants that he had an offer for a one year agreement from another party and advised the tenants that if they didn't agree to enter into a one year fixed term, he would not accept them as tenants. The tenants agreed to the one year fixed term and moved into the unit on or about June 30, 2013. He testified that on July 1 they signed a tenancy agreement with the one year fixed term provision, which ended the fixed term on June 30, 2014, and the tenants paid a security deposit at that time.

The landlord testified that the tenants ended the fixed term early on September 1, 2013 and although they paid rent for the month of September, he was unable to secure new tenants until December 1, 2014. The landlord seeks to recover 2 months of lost income as well as costs associated with hiring a property management company to re-rent and manage the rental property.

The tenants testified that they signed the fixed term agreement under duress. They claimed that they had a verbal agreement that the tenancy would be a month to month tenancy and it was only after the tenants had surrendered their home in another city and made plans to move to the rental unit with their three children that the landlord advised that they had to agree to a one year fixed term. They also argued that the rental unit was unfit for habitation.

### Analysis

In order for the landlord to succeed in his claim, he must not only prove that the tenants breached the tenancy agreement, but must also prove that he suffered a compensable loss and that he acted reasonably to minimize his losses.

In order for a contract to bind the parties, the parties must establish the terms of the contract and must exchange consideration, meaning that something of value must pass between the parties. In a tenancy agreement, typically consideration consists of the landlord promising to provide the rental unit and the tenants paying a security deposit and promising to pay rent. In this case, I find that the parties did not enter into a binding legal agreement until July 1, 2013 when they signed the tenancy agreement and the tenants paid a security deposit. Until that time, they had what may be characterized as an agreement to agree, which was not binding on either party.

I do not accept that the tenants signed the tenancy agreement under duress. Neither party was legally bound by the agreement until consideration had exchanged hands and the tenants chose to take the chance that they would be able to rent the unit when they arrived on June 30 despite the absence of a legally binding agreement. I further do not accept that the house was provided to them in an uninhabitable state. The tenants had an agent act on their behalf to view the rental unit and they relied on the agent's representations as to the condition of the unit. They had lived in the unit for one day by the time the landlord brought the tenancy agreement to them to sign and if the home were truly uninhabitable, I find that they would not have placed their family at such great risk by staying in a unit which posed a significant risk to their well being.

I find that the tenants did not have legal justification to end their tenancy prior to the end of the fixed term and I find the landlord has proven that they breached the tenancy agreement.

I accept the landlord's undisputed testimony that he was unable to re-rent the unit until December 1, causing him to lose income for the months of October and November.

The last part of the test which the landlord must meet is to prove that he acted reasonably to minimize his losses. The landlord testified that he hired a property management company to re-rent the unit and provided a copy of the agreement with that company showing that the company began acting for the landlord on September 10, 2013. I find that the tenants should not be responsible for the costs associated with retaining the property management company. The landlord is welcome to hire an agency to deal with tenancy issues on his behalf, but the tenants are not responsible for his choice to pay an agent to deal with the tenancy, particularly when they did not deal with an agency when they rented the property. The landlord should bear this cost as an operating expense.

While I accept that the property management agency began acting for the landlord on September 10, there is no evidence before me that the company advertised the rental unit for the months of October and November. The landlord did not provide copies of advertisements or correspondence with prospective tenants nor did he call an agent of the company to testify as to the steps taken to re-rent the unit.

Section 7(2) of the Act requires a claimant to do whatever is reasonable to minimize the losses that result from the other party's breach of the Act. Because the landlord has provided no information showing attempts to re-rent the unit, I am unable to find that he acted reasonably and I therefore dismiss the claim.

### Conclusion

The claim is dismissed.

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: May 05, 2015

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Residential Tenancy Branch

