



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNR, OPR, MNDC, FF

### **Introduction**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for an order of possession, for a monetary order for loss of income and for the filing fee. The tenant moved out of the rental unit on February 14, 2015 and the landlord already has possession of the unit. Accordingly the landlord's application for an order of possession is moot.

This matter was initially heard on March 10, 2015 and a decision was rendered on March 12, 2015. The tenant did not attend that hearing and on March 19, 2015, applied for a review of the decision. The tenant was granted a review hearing and the decision dated March 12, 2015 was suspended pending the review hearing decision. The review hearing was scheduled for this date.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Is the landlord entitled to a monetary order to recover loss of income and the filing fee?

### **Background and Evidence**

The landlord assumed the tenancy agreement when he purchased the rental unit. The tenancy started on April 01, 2014 for a fixed term of one year ending on March 31, 2015, at which time the tenant was required to move out. The tenant acknowledged this arrangement by initialling the boxes beside this term in the tenancy agreement. The monthly rent was \$1,345.00 payable on the first of the month. Prior to moving in the tenant paid a security deposit of \$600.00.

The tenant testified that she wanted to continue the tenancy but was reminded by the landlord, of the term that required her to move out on the end date of the fixed term.

On January 11, 2015, the tenant received a message from the landlord: *"I mentioned that our plans are not to rent the unit out when your lease ends on March 31 as we'll be using the space for family and friends with the baby coming. I wasn't sure what your plans were so wanted to make sure you knew what we were doing in good time"*

The landlord filed into evidence a copy of a new tenancy agreement that was signed on January 25, 2015. The landlord testified that the new tenant was his friend and confirmed that the new rent was \$1,500.00, but the new tenant would be providing services in lieu of rent. The landlord did not inform the tenant about this arrangement.

On January 31, 2015, the tenant informed the landlord that since it was hard to find a rental unit that she could afford, she had decided to move out, with her family to a city that was more affordable. The tenant's spouse found employment there and they had to move out by February 15, 2015. The tenant also requested the landlord to use the deposit as rent for the first half of February and she would pay the balance of \$75.00.

The tenant testified that the rental situation was such that she could easily have found a tenant to sublet the rental unit for the last six weeks of the term. She stated that people were living in hotels waiting for rental units to become available. However when she asked the landlord about when his friend or mother would be moving in, the landlord stated that they would try to move in early but the landlord did not provide a date. The tenant also testified that the landlord did not notify her that his plans had changed and that he now had a new tenant moving in on April 01.

The tenant added that the landlord did not inform her that he intended to file an application to make a monetary claim against the tenant, even though his application was made a couple of days before the tenant moved out.

The landlord agreed that he had not informed the tenant about the new tenancy agreement that was due to start on April 01, 2015. The landlord testified that since the tenant was in a fixed term tenancy he did not have to look for a tenant for the remainder of the term. The landlord is claiming a loss of income for the remainder of the fixed term (\$2015.00) and for the filing fee (\$50.00), in the total amount of \$2,065.00.

## **Analysis**

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a fixed term tenancy by giving the landlord 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.

Based on the sworn testimony of both parties, I find that the tenant did not provide the landlord with adequate notice to end tenancy. On January 31, 2015, the tenant informed the landlord that she was ending the tenancy effective February 15, 2015 which is prior to the end date of the fixed term. By ending the tenancy prior to the end date of the fixed term, the tenant breached the tenancy agreement. The landlord is claiming a loss of income that resulted from this breach.

Section 7 of the *Residential Tenancy Act* states that a landlord who claims compensation for loss that results from the tenant's non-compliance with the *Act* or their tenancy agreement must do whatever is reasonable to minimize the loss. In all cases, the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. In this case, in order to minimize the loss, the landlord had to make efforts to re-rent the unit.

The landlord testified that he did not make efforts to re rent the unit because he had a tenant for April 01, 2015. The landlord did not inform the tenant of this new tenancy. Instead the landlord told the tenant that he had plans not to re rent the unit and that his mother and/or friend would be moving in. In addition, the landlord did not inform the tenant that he would be making a claim for loss of income even though he made his application prior to the date the tenant moved out.

The tenant requested for information regarding the move in date of the landlord's family/friend, but the landlord did not provide the tenant with this information. The tenant testified that she could have easily found a sub tenant for the six weeks left on the fixed term tenancy, but did not do so because she was given to understand that the landlord's family and/or friend would be moving in "early".

Based on the above, I find that the tenant breached the tenancy agreement. However, pursuant to section 7, I find that the landlord did not do whatever is reasonable to minimize the loss of income and by not providing proper information regarding the arrival dates of the new occupants; he did not give the tenant an opportunity to do so.

I further find that the landlord did not inform the tenant about the new tenancy agreement which was entered into on January 25, 2015, which is prior to the date of the notice to end tenancy. The tenant's understanding based on a text message dated January 11, 2015 was that the landlord did not intend to re rent the unit.

Based on the testimony of the tenant regarding the local rental situation, I accept her testimony that she could have found someone to rent the unit for six weeks if she was informed about the new tenant moving in on April 01, 2015 and the landlord's change of plans regarding re-renting the unit. This would have benefitted both parties and the landlord would not have suffered a loss of income.

The landlord also had the opportunity to find a short term tenant but by his own admission, did not do so. Based on the landlord's response to the tenant regarding the move in date of his family and/or friend, I find that the reason for not looking for a short term tenant may have been that the landlord's family and/or friend moved in shortly after the tenant moved out.

Based on the above, I find that the rental unit may have been occupied during the latter half of February. I further find that the landlord did not make efforts to mitigate his losses and that by providing the tenant with inaccurate information, did not give the tenant an opportunity to do so. Therefore pursuant to section 7, I find that the landlord is not entitled to his claim for loss of income.

The landlord has not proven his case and therefore must bear the cost of filing his own application.

### **Conclusion**

The landlord's application is dismissed in its entirety.

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 08, 2015

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Residential Tenancy Branch

