



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for a Monetary Order for: unpaid rent; to keep the Tenant’s security deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”); and for the filing fee.

An agent for the Landlord (the “Landlord”) appeared for the hearing and provided affirmed testimony and documentary evidence in advance of the hearing. There was no appearance for the Tenant during the 30 minute duration of the hearing. As a result, I turned my mind to the service of the documents by the Landlord for this hearing.

The Landlord testified that the Tenant was served with a copy of the Application and the Notice of Hearing documents to the Tenant’s forwarding address which was provided on the move out Condition Inspection Report. This was served by registered mail on November 22, 2014. The Landlord provided a copy of the Canada Post tracking number and receipt as evidence for this method of service. The Landlord testified that the Canada Post website indicated the documents had been received and signed for by the Tenant on November 24, 2015.

Based on the foregoing, I accept the Landlord’s evidence and I find the Tenant was served with the documents for this hearing pursuant to Section 89(1) (c) of the Act. As a result, I continued to hear the undisputed evidence of the Landlord as follows.

At the start of the hearing the Landlord explained that he wanted to withdraw his portion of his monetary claim relating to the strata management illegal moving fee of \$200.00 and the claim for \$100.00 relating to his own administration fees. The Landlord explained that these matters were still on-going and therefore he did not want them to be part of this hearing. As a result, I dismissed these portions of the Landlord’s Application with leave to re-apply.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for November 2014 unpaid rent?
- Is the Landlord entitled to mitigation costs and the move-out fee?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of his monetary claim?

Background and Evidence

The Landlord testified that this tenancy for the strata unit started on May 1, 2014. A written tenancy agreement was completed and the term of the tenancy was fixed for one year which was due to expire on April 30, 2015. However, the Tenant vacated the rental unit early on November 7, 2014. Rent under the agreement was payable in the amount of \$1,650.00 on the first day of each month. The Tenant paid the Landlord a security deposit of \$825.00 on April 20, 2014 which the Landlord still retains.

The Landlord testified that the Tenant sent him a text message on October 6, 2014 informing him that he had to leave the rental suite because his wife was pregnant. No date of move out was provided by the Tenant in the text message. The Landlord testified that the Tenant fully vacated the rental unit and returned the keys on November 7, 2014 which is the date the move out condition inspection was completed. At this point the Landlord was provided with the Tenant's forwarding address on the Condition Inspection Report. The Landlord made his Application on November 21, 2014.

The Landlord testified that the Tenant failed to pay rent for November 2014 and as a result, seeks to claim **\$1,650.00** relating to this month. The Landlord testified that he worked diligently and tirelessly to re-rent the suite. This involved multiple advertisements that were placed on line and attending to numerous enquiries and viewings for re-rental. The Landlord explained that if he had not put in the effort he did, it likely would not have re-rented for December 2014. However, the Landlord was able to successfully rent it out for December 2014 thereby minimising the loss to the Tenant.

The Landlord provided evidence of the advertisements placed on line to support the efforts he made to re-rent the suite. As a result, the Landlord claims **\$200.00** for his own costs related to the efforts he made to re-rent out the suite.

The Landlord testified that at the move out condition inspection he asked the Tenant whether he had informed and paid the strata the move-out fee of \$200.00 according to the strata by-laws. The Landlord testified that the Tenant lied and said he did. However,

the Landlord was then sent a letter by the strata informing him that the Tenant had move out illegally and the owner of the rental unit is to pay \$200.00 for the move out fee. This letter was provided into evidence.

The Landlord also sought to claim his postage costs and costs associated with preparation and his time for this hearing. The Landlord was informed during the hearing that these costs cannot be awarded under the Act and must be borne by each party during the dispute resolution process. However, the Landlord was informed that under Section 72 of the Act I would consider his claim for the filing fee.

### Analysis

I accept the Landlord's evidence that the Tenant provided a forwarding address on the move out Condition Inspection Report on November 7, 2014. The Landlord made his Application on November 21, 2014. Therefore, I find that the Landlord made the Application within the 15 day time limit stipulated by Section 38(1) of the Act.

Section 45(2) and Policy Guideline 30 to the Act on fixed term tenancies explains that neither a landlord nor a tenant may end a fixed term tenancy except for cause or breach of a material term. In this case, I find no evidence that the Tenant had cause to end the fixed term tenancy. Therefore, by ending the fixed term tenancy prematurely on November 7, 2014, I find the Tenant breached the Act.

As the Tenant failed to pay for November 2014 rent and was still occupying the rental unit for the first week of November 2014, I find this did not allow sufficient time for the Landlord to re-rent the suite for the remainder of November 2014. Therefore, I find the Landlord is entitled to November 2014 rent in the amount of **\$1,650.00**.

In relation to the Landlord's costs of \$200.00 for re-renting the suite, I accept the Landlord's undisputed evidence that he took diligent and timely actions to get the unit re-rented. I accept the Landlord's evidence that if he had not gone to the extent of taking these steps that he did, then the suite may not have been re-rented for the month of December 2014 and the loss claimed against the Tenant may have been greater than \$200.00.

Based on the foregoing I find the Landlord is entitled to these costs claimed as he complied with Section 7(2) of the Act in minimizing the loss to the Tenant caused as a result of the Tenant's breach of the tenancy agreement. The Landlord is awarded the **\$200.00** for his costs in re-renting the suite.

Section 7(1) (f) of the *Residential Tenancy Regulation* allows a landlord to charge a tenant a move out fee imposed by the strata corporation to the landlord. Therefore, based on the Landlord's undisputed evidence, I accept the Landlord was imposed with a **\$200.00** move out fee by the strata. As a result, I find the Tenant is responsible for this fee and accordingly award this to the Landlord.

As the Landlord has been successful in his claim, I also grant the Landlord the **\$50.00** filing fee for the cost of having to make the Application. Therefore the total amount granted to the Landlord is **\$2,100.00** (\$1,650.00 + \$200.00 + 200.00 + \$50.00).

As the Landlord already holds the Tenant's \$825.00 security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act. As a result, the Landlord is issued with a Monetary Order for the remaining balance of **\$1,275.00**. This order must be served on the Tenant and may then be enforced in the Provincial Court (Small Claims) as an order of that court if the Tenant fails to make payment. Copies of the order are attached to the Landlord's copy of this decision.

### Conclusion

The Tenant has breached the Act by breaking the fixed term tenancy. Therefore, the Tenant is liable for the resulting costs incurred by the Landlord. As a result, the Landlord may keep the Tenant's security deposit and is issued with a Monetary Order of \$1,275.00 for the remaining amount of losses awarded.

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: June 02, 2015

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Residential Tenancy Branch

