



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

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

The Landlord appeared for the hearing with the property manager. The two female Tenants named on the tenancy agreement (referenced in this Decision as “SS” and “KS”) appeared for the hearing. The two male tenants who formed part of the tenants that resided in the rental unit (referenced in this Decision as “KHS” and “KRS”) also appeared for the hearing. The parties provided affirmed testimony during the hearing as detailed below.

### Preliminary Issues

KS confirmed receipt of the Landlord’s Application by registered mail pursuant to Section 89(1) (c) of the Act. No issues were raised in relation to the service of the Landlord’s documentary evidence prior to the hearing. SS had submitted late written evidence prior to this hearing. The Landlord testified that he did not receive a copy of this. As a result, I did not consider this evidence during the hearing. However, I did not prevent the Landlord from providing this evidence into oral testimony.

The parties confirmed that the tenancy had ended and that the Landlord had received vacant possession of the rental unit. As there was no requirement for an Order of Possession, this request on the Landlord’s Application was accordingly dismissed.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided. I have

considered the evidence provided by the parties in this case but I have only documented the evidence which I relied upon to making findings in this Decision.

### Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent for May 2015, and lost rent for June and July 2015 for a breach of the fixed term tenancy?
- Has the Landlord mitigated the losses claimed in the Application?
- Can the Landlord keep the Tenants' security deposit?

### Background and Evidence

The parties agreed that this tenancy started on August 1, 2014 and was for a fixed term of one year due to expire on July 31, 2015. The rental unit was rented to six students under one agreement but two of the parents of some of the students signed the written tenancy agreement as the guardians of the tenancy. Rent under the agreement was payable by the Tenants in the amount of \$3,000.00 on the first day of each month. The Tenants paid a \$1,500.00 security deposit on April 7, 2014 which the Landlord still retains.

KRS testified that the Landlord had failed to deal with significant repairs that did not comply with the health and safety standards such as a collapsed ceiling, lack of sufficient heating and overflowing gutters. As a result, KRS, KHS and the other student tenants wrote an email to the Landlord on March 26, 2015 informing the Landlord that they would be vacating the rental unit at the end of April 2015.

KS testified that this email notice was not sufficient and that the Landlord requested the notice in writing from the KS and SS as they were the Tenants on the tenancy agreement. KS testified that they sent the Landlord an email on March 31, 2015 confirming that the tenants would be vacating at the end of April 30, 2015. This was provided in the Landlord's documentary evidence.

SS testified that on April 30, 2015 the Landlord visited the rental unit at which point only one tenant remained and the others had vacated even though they had left a few items of personal belongings behind. SS testified that the Landlord requested rent from the remaining tenant and \$500.00 was paid to the Landlord. SS testified that the Landlord informed the tenant that if the remaining amount of rent was paid then they could continue to reside at the rental unit.

On May 16, 2015 SS sent the Landlord another e-mail informing the Landlord that as he had collected rent from one of the tenants without informing her, and had not obtained possession of the rental unit, she was again giving written notice to end the tenancy at the end of May 31, 2015.

KS confirmed that as one of the tenants had remained in the rental unit for the period of May 2015, they were responsible for rent for this period of time. KS confirmed that at the time of this hearing, the Landlord had been paid \$2,000.00 towards May 2015 rent and only \$500.00 was now outstanding.

The Landlord confirmed that there was only a balance of \$500.00 outstanding for May 2015 rent and that he did receive the notices to end tenancy from the Tenants as testified during the hearing. The Landlord testified that when he went to the rental unit on April 30, 2015, the tenants had not fully vacated the rental unit and they informed him they had no intention of vacating it. The Landlord explained that it was clear that full vacant possession of the rental unit would not have been achieved on that day. The Landlord confirmed that he took \$500.00 from one of the tenants and informed him that he was accepting the money for use and occupancy only. The Landlord testified that he did not know what to do so he issued the Tenants with a notice to end tenancy for unpaid rent on May 4, 2015 and made his Application on May 25, 2015.

In addition to the outstanding rent of \$500.00 for May 2015, the Landlord now claims for lost rent for June and July 2015 because the Tenants had broken the fixed term tenancy. When the Landlord was asked about what efforts he had made to mitigate the loss he was claiming, the Landlord testified that he conducted several viewings of the rental unit from the time he had received the first notice from the Tenants. The Landlord testified that he had texted the tenants when he conducted these viewings but he was unable to re-rent the unit until August 2015. The Landlord confirmed that he had not provided any evidence relating to the efforts he made to re-rent the unit but submitted that he was not even sure the tenants would vacate at the end of May 2015 based on their non-compliance with the previous notice to vacate on April 30, 2015.

The Tenants testified that they should not be responsible for June and July 2015 rent as they had given sufficient notice to the Landlord to end the tenancy and for the reasons that the Landlord had failed to complete major repairs which breached the tenancy agreement. The tenants were asked whether they had informed the Landlord in writing of this breach to which they replied they had not. The Tenants also confirmed they had not submitted any evidence of the major repairs that were required of the rental unit. The Landlord argued that if these issues were as serious as they were being made out to be, then why did six tenants continue to reside in the rental unit during the tenancy.

### Analysis

Section 26(1) of the Act states that a tenant must pay rent when it is due under a tenancy agreement whether or not a landlord complies with the Act. Fixed term tenancies are designed to strictly prohibit a tenant or landlord from ending the tenancy. However, the Act provides certain grounds under which such a tenancy may be ended. Section 45(3) of the Act states that a tenant may end a fixed term tenancy if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure.

In this case, I find the Tenants have failed to establish that they had authority under the Act to end the tenancy. The Tenants failed to provide any corroborative or supporting evidence of apparent major repairs that were discovered by the tenants during the tenancy. It would have been reasonable to expect that on such an important matter which led to the ending of the tenancy that such evidence would have been made available for this hearing. Furthermore, there is no evidence before me that the tenants notified the Landlord of these repairs in writing and gave an opportunity and a reasonable time period for them to be remedied before they took the critical step of ending the tenancy.

I also agree with the Landlord, that if these issues were as serious as they were presented during the hearing, then I find it hard to believe that the tenants endured such conditions over a long duration of time without properly addressing this with the Landlord.

As I have determined that the Tenants were not authorised to end the tenancy, I must now turn my mind to the Landlord's monetary claim. In addition to the undisputed amount of \$500.00 for May 2015 rent, the Landlord claims for loss of rent for June and July 2015 because he was not able to re-rent the unit until August 1, 2015.

Section 7(2) of the Act states that where a party is making a claim for compensation for damage or loss that results in the other's non-compliance of the Act, they must do whatever is reasonable to minimise that damage or loss. Policy Guideline 3 to the Act states that this statutory duty to mitigate loss applies in claims by landlords for lost rent. Using this provision of the Act, I make the following findings in relation to the Landlord's claim.

I find that when the Landlord was first notified on March 31, 2015 that the tenants were going to vacate the rental unit by the end of April 2015, it was the Tenants' responsibility

to ensure that they were fully vacated on this date and time and the Landlord should not be held responsible for re-instating or continuing the tenancy just because he failed to demand or take possession of the rental unit. I find that when the Landlord was confronted with this situation it was clear that he was not going to receive vacant possession of the rental unit and was entitled to rent for May 2015.

The Tenants did not dispute the fact that they owe the Landlord \$500.00 in unpaid rent for May 2015 and accordingly the Landlord is awarded this amount. With respect to the Landlord's monetary claim for lost rent for June and July 2015, I find the Landlord has failed to comply with Section 7(2) of the Act.

Although the Landlord provided insufficient evidence of attempts he had made to mitigate rent loss when he received the Tenants' first notice to end tenancy on March 31, 2014, I find that this is now a moot issue as the tenancy continued after the end date of April 30, 2015. However, I find that the Tenants did give another notice to the Landlord on May 16, 2015 and the requirement for the Landlord to mitigate loss would have again started at this point.

The Landlord testified that he sent text messages to the tenants when he had viewings for the rental unit, but no such text messages were provided. The Landlord did not provide any supporting or corroborating evidence of his statutory duty to mitigate loss such as advertisements for the rental of the property. The Landlord testified that he had not been able to re-rent the unit until August 1, 2015; however, the Landlord failed to provide any supporting evidence of this such as a tenancy agreement.

Furthermore, I find it difficult to believe that it would have taken such a lengthy period of time to re-rent a rental unit located in such a large city of this size where rental units are in high demand. Based on the foregoing, I struggled to award any amount to the Landlord for June and July 2015 lost rent.

However, I take into consideration the fact that the Tenants had given written notice to end the tenancy at the end of April 2015 and did not comply in vacating the rental unit on this date. Therefore, I find the Landlord's submission that he was not sure when he got the second notice to end the tenancy on May 31, 2015 that the tenants would again not move out on this date, warrants some validity.

On this basis, I find the Landlord should be payable some compensation for June 2015 rent as a result of the Tenants' breach of the fixed term tenancy. As the Landlord failed to provide insufficient evidence of efforts to mitigate loss for June 2015 **after** the Tenants had actually vacated and he had received vacant possession of the rental unit, I limit the Landlord's award to two weeks rent as it could have been possible that the rental unit could have been re-rented for June 15, 2015.

Based on the foregoing, I find the Landlord is entitled to **\$500.00** for the unpaid May 2015 rent and **\$1,500.00** for June 2015 rent. The remainder of the Landlord's monetary claim is dismissed. As the Landlord has been partially successful in his Application, I also award him the filing fee of **\$100.00** pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Landlord is **\$2,100.00** (\$1,500.00 + \$500.00 + \$100.00).

As the Landlord already holds \$1,500.00 in the Tenants' 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 **\$600.00**. This order must be served on the Tenants and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenants fail to make payment.

### Conclusion

The Tenants broke the fixed term tenancy agreement. However, the Landlord failed to mitigate the loss of rent being claimed. Therefore, the Landlord is only awarded a portion of claim. The Landlord can keep the Tenants' security deposit of \$1,500.00 and is issued with a Monetary Order for the remaining balance of \$600.00 which includes the filing fee.

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: July 09, 2015

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Residential Tenancy Branch

