



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlords and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matter

The Landlord states that an evidence package composed of a copy of the tenancy agreement, photos, copies of the Tenant’s personal cheques and copies of rental advertisements was provided to both the Tenants and the Residential Tenancy Branch. The Landlord indicated during the hearing that the rental advertisements were made middle to end of April 2015. The Tenants state that, other than a copy of the application, notice of hearing and information handout, they only received the photos. The Tenant states that they have their own copy of the tenancy agreement provided to them at the onset of the tenancy. The Landlord states that the evidence package was given to the RTB in person on April 7, 2015.

Noting that no documentary evidence has been received by the RTB and considering the conflicting evidence in relation to the rental advertisements being among the

documents I find it likely that the Landlord failed to provide the evidence as required and that the documentary evidence may not therefore be considered.

The Landlord states that it wants to claim damages to the unit left by the Tenant. No amendment to the application was made by the Landlord and there is nothing in the application in relation to such a claim.

Rule 2.11 of the RTB Rules of Procedure (the "Rules") provides that an amendment to an application may be made in advance of the hearing. Rule 2.2 provides that a claim is limited to what is stated in the application. As the Landlord made no amendment to the application to include a claim for damages to the unit and as there is no indication in the application of a claim for damages to the unit I find that the Landlord's claim for damages to the unit may not be considered.

#### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

#### Background and Evidence

The tenancy started on May 15, 2014 for a fixed term ending May 14, 2016. Rent of \$4,600.00 was payable monthly on the 15<sup>th</sup> day of each month. At the outset of the tenancy the Landlord collected \$2,500.00 as a security deposit that included \$200.00 as fob/key deposits. The Tenants paid the rent due February 15, 2015.

The Landlord states that when they attended the unit on March 15, 2015 to pick up the rent cheque the Tenants were not there. The Landlord states that they waited for two weeks before they returned and entered the unit with a third party present. The Landlord states that the place appeared abandoned. The Landlord states that the Tenants gave no notice of moving out and claim \$4,600.00 for the rent due March 15, 2015 and \$4,600.00 for the rent due April 15, 2015. The Landlord states that the unit was advertised in local papers starting April 21, 2015 and on line starting mid-April 2015. The advertisement did not set out a rental amount and interested persons were

informed that rent details would be discussed in person. The Landlord states that it was never rented because it took three weeks to clean. The Landlord states also that a family member was going to start occupying the unit on April 16, 2016 and no tenants could be found for this term.

The Tenant states that the Landlord was told on February 28, 2015 that the Tenants were going to end the tenancy on March 15, 2015. The Tenants state that they wanted to help the Landlord by subletting or assigning the unit and placed ads online. The Tenant states that the Landlord informed the Tenants that the Landlord wanted to move into the unit for September 2015 so the Tenants were only able to advertise the unit for this short term. The Tenant states that they found two prospective tenants but that the Landlord disagreed that the Tenants could either sublet or assign the unit. The Tenant states that they still moved out of the unit on March 15, 2015 and gave the keys personally to Landlord JL by placing them directly in his hands. The Tenant argues that the tenancy therefore ended mutually.

The Landlord denies receiving the keys to the unit and states that had this occurred the Landlord would have known much earlier about the state of the unit. The Landlord denies that the Tenants were told that the Landlord wanted to move into the unit for September 2015 and was never notified about any interested tenants. The Landlord states that they never received any written notice from the Tenants and had no idea that the Tenants were either going to move out or obtain sublets or assignments.

The Tenant states that they orally gave notice to the Landlord on February 28 and made both text and verbal requests to the Landlord about sublets but the Landlord refused and said no sublets would be approved. The Tenant states that the Landlord also told the Tenants that they could move out any time but for sure by September 2015.

### Analysis

Section 45(2) of the Act provides that a tenant may not end a fixed term tenancy earlier than the date specified in the tenancy agreement as the end of the tenancy. Section 7

of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage the party claiming costs for the damage or loss must prove, inter alia, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed. As the Tenants were under a fixed term tenancy, I find that the Tenants could not end the tenancy before the fixed term without being liable to the Landlord for rent to the end of the term and the Tenant had a bit more than a year left on the fixed term. However while I accept that the Landlord did advertise the unit, I note the late date in the advertising. I also note that the details of the rental amount being sought and the term advertised were not provided and this lack of detail does not assist in the consideration of whether the Landlord acts reasonably to mitigate the losses claimed. The evidence that no prospective tenants could be found as the unit would be occupied after a year does not sound plausible or credible. I find it more likely the Landlord chose not to rent the unit for some other unknown reason. As a result I find that the Landlord failed to provide sufficient evidence to substantiate that it either suffered a loss due to the Tenant's actions or that it took reasonable steps to mitigate the losses claimed and I dismiss the Landlord's claim.

### Conclusion

The Landlord's application 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: September 22, 2015

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Residential Tenancy Branch

