



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order. Despite having been personally served with the application for dispute resolution and notice of hearing on April 22, the tenant did not participate in the conference call hearing.

### Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The landlord's undisputed testimony is as follows. The tenancy began on April 1, 2015 and rent was set at \$1,195.00 per month. On April 9, the tenant emailed the landlord and advised that she would be ending the tenancy. The tenant vacated the unit and on April 22 returned the keys to the landlord.

The landlord testified that upon receiving the keys, he placed advertisements for the unit indicating that it was available for rent beginning June 1. He testified that in his experience, if he had advertised that the unit was available for May 1 just a few weeks prior to that date, he would have attracted undesirable tenants.

The landlord seeks to recover \$1,195.00 in loss of income, \$50.00 as the cost of a move-out fee imposed by the strata and recovery of the \$50.00 filing fee paid to bring his claim.

### Analysis

The *Residential Tenancy Act* (the “Act”) establishes the following test which must be met in order for a party to succeed in a monetary claim.

1. Proof that the respondent failed to comply with the Act, Regulations or tenancy agreement;
2. Proof that the applicant suffered a compensable loss as a result of the respondent’s action or inaction;
3. Proof of the value of that loss; and
4. Proof that the applicant took reasonable steps to minimize the loss.

Section 45 of the Act provides that tenants may end a periodic tenancy by providing one full month’s notice. Any notice given during the month of April could not have taken effect earlier than May 31. Section 53 provides that where a party gives a notice that does not comply with the requirements of the Act, the effective date of the notice is automatically changed to reflect the correct effective date. I find that the Act operated to change the effective date of the tenant’s notice to May 31.

I find that the tenant was obligated under the terms of the tenancy agreement to pay \$1,195.00 in rent for the month of May and I find that she failed to do so, causing the landlord to lose income for the month of May. I find that the landlord has established the first 3 elements of the test outlined above. However, I find that the landlord has failed to satisfy the last element of the test.

The landlord did not make any attempt whatsoever to re-rent the unit for the month of May. Although he believed he could not find suitable tenants within such a short period of time, this does not excuse him from making an attempt, particularly as he could have screened prospective tenants in order to ensure they met his standards. I find that the landlord did not act reasonably to mitigate his losses and therefore I find that he has not established entitlement to compensation. I therefore dismiss the claim for loss of income for May.

The landlord provided no evidence that the strata had charged him a move-out fee, that such fees are payable under the bylaws or that the tenant had signed a Form K indicating that she was aware of the bylaws. I find that the landlord has not proven the first element of the test above with respect to his claim for recovery of the move-out fee and I dismiss that claim.

As the landlord has been wholly unsuccessful in his claim, I find he should bear the cost of his filing fee.

Conclusion

The claim 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: September 25, 2015

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Residential Tenancy Branch

