



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNR, MNDC, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

All named parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Neither party raised issue with service of documents.

### Preliminary Issue – Evidence after the Hearing

The landlord did not submit a copy of the tenancy agreement to the Residential Tenancy Branch or serve a copy to the tenants. Both the tenants and the landlord had a copy of the agreement. The tenants consented to me receiving the tenancy agreement after the hearing. On the basis of the tenants' consent, I ordered the landlord to send a copy of the tenancy agreement to this Branch no later than 1000 on 1 September 2015. I received the tenancy agreement.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 September 2013. The parties entered into a written tenancy agreement

on 20 July 2013. The tenancy agreement was for an initial fixed term of one year to be converted to a month-to-month tenancy thereafter. Monthly rent of \$1,250.00 was due on the first. The parties agree that the balance of the tenants' security deposit (subject to a \$25.00 deduction) was returned in accordance with the Act.

On or about 10 June 2014, the tenant TE and the landlord had a conversation. The landlord had observed the tenant TE with packing boxes and asked if the tenants intended on moving. The landlord testified that the tenant TE indicated that "the end of August is coming soon". The landlord testified that he asked the tenant TE to prepare a written notice and leave it in the common area of the rental unit for the landlord to retrieve.

The landlord testified that after the 10 June 2014 conversation, he made the decision that he was going to move back into the rental unit to complete improvements to it.

On 25 June 2014, the tenants prepared a notice to end tenancy. The notice set out an effective date of 1 August 2014.

On 28 June 2014, the tenant TE sent an email to the landlord setting out that the notice to end tenancy for 31 July 2014 was located in the common area as asked.

On 30 June 2014, the tenant AE telephoned the landlord to complain about the lower occupant's behavior. In that telephone call the tenant AE stated that the tenants would be leaving at the end of July 2014. The landlord testified that this was the first time he was aware that the tenants intended to leave at the beginning of August or end of July.

I was provided with a text message dated 30 June 2014. The landlord testified that he sent this text message after speaking with the tenant AE. The landlord sets out the in the text message the obligations of the tenants under the Act with respect to the fixed-term tenancy and explains that he will be unable to mitigate his damages:

*Since I plan on doing some improvements in September and October, I wouldn't be able to mitigate the loss of your rent for August. Therefore I trust you and [tenant TE] will honour the terms of your lease.*

The tenant AE testified that when the tenants attended at the rental unit for the condition move out inspection the landlord was doing "things" to the rental unit. I asked the tenant AE to be more specific. He did not provide specifics.

The landlord testified that he did move into the rental unit. The landlord testified that before he moved into the rental unit he was living on his boat. The landlord testified that he was expecting the rental income from August. The landlord testified that for the month of August the rental unit sat empty. The landlord testified that he did not do anything to the rental unit during this period. The landlord testified that he did work around the exterior of the rental unit for this period. The landlord testified that he did not think that it would be reasonable to find a tenant for one month.

### Analysis

I find that the landlord and tenants entered into a fixed term tenancy for the period 1 September 2013 to 31 August 2014. The tenancy ended on or about 31 July 2014, when the tenants vacated the rental unit.

Subsection 45(2) of the Act sets out how a tenant may end a fixed term tenancy:

A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

This means that a tenant cannot give notice to end the tenancy before the end of the fixed term. In this case, the tenants vacated the rental unit before the completion of the fixed term. The tenants have breached the Act and as a result the landlord experienced a loss of rent for August.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

The duty to mitigate is explained in *Residential Tenancy Policy Guideline*, "5. Duty to Minimize Loss":

Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act..., the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

...

If the arbitrator finds that the party claiming damages has not minimized the loss, the arbitrator may award a reduced claim that is adjusted for the amount that might have been saved.... The landlord who does not advertise for a new tenant within a reasonable

time after the tenant vacates a rental unit or site prior to the expiry of a fixed term lease may not be entitled to claim loss of rent for the first month of vacancy;

...

In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent. ...

[emphasis added; footnotes removed]

The landlord must attempt to mitigate his losses. In this case, the landlord specifically made no attempt to re-rent the rental unit for August. The landlord testified that he viewed it as unreasonable to do so. I have not been provided with any evidence of the rental market in the rental unit's municipality that would lead me to conclude that short-term rentals are not possible. As such, I find that by failing to make any attempt to rent the rental unit on a short-term basis, the landlord has failed to mitigate his losses. As such, the landlord is not entitled to compensation for the tenants' early end to tenancy.

As the landlord has not been successful in this application, he is not entitled to recover the filing fee from the tenants.

### Conclusion

The landlord's application is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: September 1, 2015

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Residential Tenancy Branch

