



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MNDC, MNSD, MNR, MND, FF*

### **Introduction**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order for unpaid rent, loss of income, cost of cleaning, management fees to re-rent the unit and for the recovery of the filing fee. The landlord also applied to retain the security deposit and the pet deposit.

The landlord testified that on April 10, 2015, he served the tenant with the notice of hearing by registered mail to the address provided by the tenant. The landlord filed proof of service. Despite having been served the notice of hearing, the tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Is the landlord entitled to a monetary order for unpaid rent, loss of income cost of cleaning, management fees to re-rent the unit and for the recovery of the filing fee?

### **Background and Evidence**

The landlord testified that the tenancy started on December 01, 2013 for a fixed term of two years ending November 30, 2015. The monthly rent was \$1,725.00 payable on the first of each month. Prior to moving in, the tenant paid a security deposit of \$862.50 and a pet deposit of \$862.50.

A tenancy agreement was filed into evidence. The landlord stated that the tenancy agreement contained an addendum. However a copy of the addendum was not filed into evidence. I gave the landlord the opportunity to fax the addendum because he stated that it contained a clause that was related to his claim for costs of re-renting the unit. The landlord faxed a hand written note from the tenant dated March 17, 2015 instead of the addendum to the tenancy agreement.

The landlord stated that prior to signing the tenancy agreement, the tenant requested new appliances. The tenant agreed to pay for the appliances and for the cost of disposal of the old appliances in the total amount of \$1,200.00, in exchange for a reduced rent. The landlord agreed to reduce the rent to \$1,725.00 in order for the tenant to recover the \$1,200.00 over the period of two years. The landlord filed proof of this arrangement by way of emails between the two parties.

The landlord testified that despite this arrangement, the tenant took the new appliances with her when she moved out.

The landlord stated that prior to the start of tenancy, based on the tenant's offer to rent the unit for a fixed term of two years, he also agreed to allow the tenant to change the carpet at his cost and he reimbursed the tenant with a cheque in the amount of \$2,000.00. The landlord stated that since the tenant ended the tenancy prior to the two year term, he is claiming the return of a prorated amount of \$666.66.

The landlord stated that in October 2014, the tenant informed him that she had found a house that she would like to purchase and that if the sale materialized, she would be moving out sometime in the new year, but was not sure exactly when. The tenant sent a follow up email to the landlord on December 02, 2014 informing him that her plans had fallen through and that she would not be moving out prior to December 01, 2015, which is the end date of the fixed term tenancy.

The landlord stated that on March 17, 2015, the tenant informed the landlord in writing that she was moving out on March 28, 2015. On March 25, 2015, the landlord informed the tenant that because she was ending the tenancy prior to the end date of the fixed term, she would be responsible for any loss of income and for the cost of re-renting the unit. The tenant responded the next day and agreed to pay one half month's rent for ending the tenancy prior to the end date of the fixed term.

The landlord filed proof of having incurred a cost of \$1,097.25 in management fees to re-rent the unit.

The landlord stated that the tenant left the unit in a messy condition. A copy of the move in/move out inspection report and photographs were filed into evidence. The landlord also filed a receipt in the amount of \$685.00 for the cost of cleaning the rental unit. This receipt states that the cleaning services included the inside as well as the outside of the unit.

The landlord stated that he advertised the unit and had showings but despite his efforts to re rent it, he was unable to find a tenant for April 2015. A new tenant was found for May 01, 2015. The landlord is claiming the loss of income for the month of April 2015.

The landlord is claiming the following:

1.	Loss of rental increase for second year of term @ 2.5%	\$345.04
2.	Management fee to re-rent unit	\$1,097.25
3.	Improvements made due to extended term of lease	\$666.66
4.	Loss of income for April 2015	\$1,725.00
5.	Agreement to purchase new appliances	\$1,200.00
6.	Cost of cleaning	\$685.00
7.	Filing fee	\$100.00
	Total	<b>\$5,818.95</b>

### **Analysis**

Based on the sworn testimony of the landlord and in the absence of evidence to the contrary, I find as follows:

1. Loss of rental increase for second year of term @ 2.5% - \$345.04

The landlord explains in his written submission that had the tenant not entered into a two year fixed term, he would have applied a 2.50% increase to rent after the end of the first year. Based on this, the landlord is claiming \$345.04 as compensation for his loss.

Section 42 of the *Residential Tenancy Act* addresses the timing of a notice of rent increase as permitted by legislation. A rent increase does not automatically come into effect at the end of one year of tenancy and does not apply to fixed term tenancies. Based on the above, I find that I must dismiss the landlord's claim for loss of income due to missed rent increase.

2. Management fee to re-rent unit - \$1,097.25

The landlord stated that he had an agreement with the tenant regarding the cost of re-renting the unit if the tenancy ended prior to the end date of the fixed term. The landlord stated that this clause was set out in the addendum to the tenancy agreement. The addendum was not filed into evidence and despite giving the landlord an opportunity to fax it in after the hearing; he did not provide a copy of the addendum.

In the absence of a signed agreement regarding the tenant's responsibility to bear the cost of re-renting the unit, I dismiss the landlord's claim for \$1,097.25.

3. Improvements made due to extended term of lease - \$ 666.66

The landlord agreed to reimburse the tenant in the amount of \$2,000.00 for a carpet change as selected by the tenant. The landlord stated that he agreed to this based on the length of the term. However, there is no documented agreement that would make the tenant liable for a prorated cost if the tenancy ended prior to the fixed term. In addition the new carpet continues to increase the value of the rental unit. Therefore I find that the landlord is not entitled his claim for a prorated amount to cover the cost of the carpet.

4. Loss of income for April 2015 - \$1,725.00

Section 45(2) of the *Residential Tenancy Act* states that 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 on which the tenancy is based that rent is payable under the tenancy agreement.

In this case the tenant was in a fixed term tenancy that would end on December 01, 2015. The tenant provided notice in writing on March 17, 2015 and moved out on March 28, 2015. Since rent is due on the first of each month, I find that the tenant did not provide adequate notice. The landlord mitigated his losses by attempting to re rent the unit in a timely manner but despite his efforts was unable to find a tenant for April 2015. I find that the tenant is liable for the loss of income suffered by the landlord and accordingly, I award the landlord \$1,725.00.

5. Agreement to purchase new appliances - \$1,200.00

Based on the landlord's testimony and the email correspondence filed by the landlord into evidence, I find that that the landlord agreed to lower the rent to reimburse the tenant for the cost of the new appliances. However at the end of the tenancy the tenant took away the appliances after having gained the advantage of a reduced rent. I find that the tenant was not entitled to remove the appliances and therefore must pay the landlord \$1,200.00.

6. Cost of cleaning - \$685.00

Based on the landlord's testimony, I find that the unit was left in a messy condition and required cleaning. The invoice filed by the landlord states that the cost of cleaning includes the cleaning of the outside of the unit. The tenant is not responsible for the cleaning of the outside of the unit and accordingly, I award the landlord a portion of his claim in the amount of \$350.00 which is approximately half of the cost incurred.

7. Filing fee - \$100.00

The landlord has proven most of his claim and therefore is entitled to the filing fee.

Overall the landlord has established a claim as follows:

1.	Loss of rental increase for second year of term @ 2.5%	\$0.00
2.	Management fee to re-rent unit	\$0.00
3.	Improvements made due to extended term of lease	\$0.00
4.	Loss of income for April 2015	\$1,725.00
5.	Agreement to purchase new appliances	\$1,200.00
6.	Cost of cleaning	\$350.00
7.	Filing fee	\$100.00
	Total	<b>\$3,375.00</b>

I order that the landlord retain the security deposit of \$682.50 and the pet deposit of \$682.50 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$2,010.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

**Conclusion**

I grant the landlord a monetary order of **\$2,010.00**.

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 10, 2015

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Residential Tenancy Branch