



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNDC, O, FF

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for "other"; and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on May 22, 2015 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord submitted to the Residential Tenancy Branch on May 20, 2015, was served to the Tenant via registered mail. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

### Issue(s) to be Decided

Is the Landlord entitled to compensation for lost revenue?

### Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on February 01, 2013;
- a condition inspection report was not completed at the beginning of this tenancy.
- the rental unit was vacated on December 01, 2014;
- the Tenant occupied the upper suite of this residential complex for the period between February 01, 2013 and December 01, 2014;
- the Tenant also occupied the lower suite of this residential complex for approximately six months during this tenancy;
- nobody other than the Tenant occupied the lower suite during this tenancy;
- the Tenant agreed to pay \$2,100.00 in rent for the upper suite.

The female Tenant stated that the Tenant paid an additional \$600.00 in monthly rent for the period they occupied the lower suite in the residential complex. The Landlord stated that he thinks the Tenants paid an additional \$500.00 or \$600.00 per month when they occupied the lower suite but he is not certain, as his father made those arrangements.

The Landlord is seeking compensation of \$2,100.00 for lost revenue from the upper suite and \$1,200.00 for lost revenue from the lower suite for the month of December of 2014.

The Landlord contends that revenue was lost, for both suites, because the Tenant left a variety of garbage and personal property on the residential property and in the garage of the residential complex, which is shared by both suites. The Landlord submitted digital photographs of the property left on the property and in the garage.

The female Tenant stated that the digital photographs submitted by the Landlord accurately reflect the condition of the property at the end of the tenancy. She stated that the vast majority of the property in the photographs was present at the start of the tenancy, although she acknowledges a few bags of garbage were left in the garage.

The female Tenant stated that the garbage was left in the garage to ensure it was not damaged by animals and that the Tenants offered to remove the garbage on December 08, 2014.

The Landlord stated that the dresser was the only item in the digital photographs that was present at the start of the tenancy. He stated that he had discarded all of the garbage by the time the Tenants offered to remove any garbage on December 08, 2014, and that it took him "a few hours" to remove the garbage.

The Landlord and the Tenant agree that no personal property or garbage was left in the lower or upper suite.

The Landlord stated that he did not advertise the residential complex until January 01, 2015; that he was able to find a new tenant for the lower suite for February 01, 2015; and he was able to find a new tenant for the upper suite for March 01, 2015. He stated that he did not advertise the residential complex for December of 2014 as he believed the garbage in the garage and yard rendered the rental unit unsuitable for renting.

The Tenant submits that the Landlord should have advertised the rental unit earlier.

### Analysis

On the basis of the testimony of the female Tenant, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to remove all of the garbage from the rental unit at the end of the tenancy. Specifically, I find that the Tenant left a "few bags of garbage" in the garage of the rental unit.

I find that the Landlord has submitted insufficient evidence to establish that all of the property/garbage depicted in the digital photographs submitted by the Landlord belonged to the Tenant. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a condition inspection report, that corroborates the Landlord's testimony that it was not present at the start of the tenancy or that refutes the Tenant's testimony that it was present at the start of the tenancy.

As the Landlord has failed to establish that the property was not present at the start of the tenancy, I am unable to conclude that the Tenant was obligated to remove it at the end of the tenancy.

Even if I were able to conclude that the Tenant was obligated to remove all of the property/garbage depicted in the digital photographs submitted by the Landlord, I would dismiss the Landlord's application for lost revenue for the month of December of 2014 pursuant to section 7(2) of the *Act*.

Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the *Act* must do whatever is reasonable to minimize the damage or loss. In these circumstances, I find that the Landlord did not take reasonable steps to minimize his damage or loss.

In my view, it would have been reasonable for the Landlord to remove the garbage and any property left on the residential property as soon as the rental unit was vacated. On the basis of the testimony of the Landlord, this would only have taken a "few hours". Had the Landlord taken these reasonable steps to mitigate his losses, I find that the presence of the garbage/personal items would not have interfered with his ability to re-rent the unit for December of 2014.

I find that the delay in cleaning the rental unit and the Landlord's decision not to advertise the rental unit until January of 2015 significantly contributed to the lost revenue experienced by the Landlord. As the Landlord failed to mitigate his lost revenue by cleaning and advertising the rental unit in a timely manner, I dismiss his claim for lost revenue.

I find that the Landlord's application is without merit I dismiss his application to recover the cost of filing this Application for Dispute Resolution.

### Conclusion

The Landlord's 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: October 27, 2015

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Residential Tenancy Branch

