



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1 OAK PROPERTIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF

### Introduction

The landlord applies for a monetary award for unpaid rent, loss of rental income for the months of August, September and October 2015, the cost of advertising and for damages for cleaning and a lock change.

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the tenants have broken a fixed term lease causing loss to the landlord or left the premises not reasonably clean or failed to leave keys to the premises?

### Background and Evidence

The rental unit is a one bedroom basement suite on one side of a duplex building. The tenancy started December 24, 2014 pursuant to a fixed term tenancy ending December 31, 2015. The monthly rent is \$1000.00 due on the first of each month. The landlord holds a \$500.00 security deposit.

The tenants left the premises at the end of June. There was no agreement to end the fixed term tenancy early. It is not disputed that the July rent payment was not honoured by the tenants' financial institution.

The landlord's representatives discovered on or about July 7th that the tenants had left.

There had been some discussion prior to June 30th about cancelling the tenancy and it appears that each side was attempting to find acceptable tenants to take the place of the respondent tenants, but without success.

The tenants say they left the keys on a ledge in the suite. The landlord's representative Ms. W.S. says they didn't and had to incur a rekeying expense.

Ms. W.S. also testifies that the premises required cleaning at a cost of \$140.00. The tenants offered no evidence to contradict this evidence.

The landlord advertised the premises for rent through a local paper, at a cost of \$1018.50 plus through free avenues like Kijiji, but without success. The premises remain unrented as of the date of this hearing.

### Analysis

A tenant in a fixed term tenancy is legally obliged to pay the rent accruing during the entire term. A tenant who repudiates the tenancy, moves out prior to the end of the term and stops paying rent may be subject to a claim for loss of rental income.

A landlord in such circumstances is obliged to elect whether to accept the end of the tenancy with the right to sue for unpaid rent to the date of abandonment; or to accept the abandonment and end the tenancy, with notice to the tenant of an intention to claim damages for loss of rent for the remainder of the term of the tenancy (see Residential Tenancy Policy Guideline 3, "Claims for Rent and Damages for Loss of Rent").

In this case I find that the landlord made it known prior to June 30 that the tenants would be obliged to pay rent for the remainder of the term unless a reasonable replacement was located. In any event, the landlord's application, brought September 23, 2015, was sufficient notice, given the fact that the tenants had not provided a forwarding address when they left.

The advertising costs incurred by the landlord in attempting to find new tenants are reasonable costs incurred as a result of the tenants breaking the fixed term lease and I award them in the amount of \$1018.50, as presented.

The landlord is owed the July rent of \$1000.00 and I award that amount.

I find that the landlord has made reasonable attempts to mitigate its loss but has, to date, suffered loss of rental income of \$3000.00 for the months of August, September and October 2015 and I award it that amount.

I find that the premises required cleaning after the tenants left and that a reasonable cleaning cost is \$140.00 as per the cleaner's invoice submitted at hearing.

I find that the tenants did not leave the keys behind when they left. If they had, I consider it unlikely the landlord would have gone to the effort and expense of having the premises rekeyed. At hearing I indicated that the landlord is entitled to recover the full \$81.96 cost for rekeying. However, I have reconsidered that position. There is no reason the tenants should have to pay for the cost of six keys. Two keys plus a landlord's key are all that they should be responsible for. If the landlord wishes to have more keys than three, it should be at the landlord's expense.

I award the landlord \$72.00 for rekeying.

At the hearing there was some discussion about amending the landlord's claim to include a claim for loss of rental income from the months of November and December, 2015. That amendment was not granted. The landlord is free to apply in that regard.

### Conclusion

The landlord is entitled to a monetary award of \$5230.50 plus recovery of the \$50.00 filing fee. I authorize the landlord to retain the \$500.00 security deposit it holds, in reduction of the amount awarded. There will be a monetary order against the tenants for the remainder of \$4780.50.

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: December 01, 2015

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Residential Tenancy Branch

