



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR MNSD FF

### **Introduction:**

Both parties attended the hearing and the tenant confirmed she was served with the Application for Dispute Resolution by registered mail. I find that the tenant was legally served with the documents according to sections 88 and 89 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* for orders as follows:

- a) A monetary order pursuant to Sections 7, 44, 45 and 67 for rental loss due to the breach of a fixed term lease and for damages;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

### **Issue(s) to be Decided:**

Is the landlord entitled to a Monetary Order for rental loss and filing fee?

### **Background and Evidence:**

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenant had a fixed term lease expiring July 31, 2015. Rent was \$1295 a month and a security deposit of \$725 was paid. The tenant gave notice on May 5, 2015 and vacated on June 1, 2015 before the end of the fixed term. In a hearing and Decision on March 22, 2016, the tenant received a monetary order for double her security deposit for the landlord had retained the deposit contrary to section 38 of the Act.

In this hearing, the landlord is claiming \$1295 for one month's rent for the breach of the fixed term lease, \$75 for repairs and \$25 for removing a stain on the carpet. He submitted documentary evidence as to costs or evidence on when he re-rented the unit. The tenant submitted evidence of correspondence between her and the new tenant. The new tenant in the correspondence said they moved in right after she left and they think they paid almost a full month's rent. Although I queried the landlord extensively and offered to take a break while he called or consulted other persons regarding his records, he could not recall how much rent he collected for June 2016 or the costs of repairs or stain removal and was unable to contact anyone else to verify it. He said the new male tenant had done the repairs and the new tenants have since vacated. No invoices were provided.

The tenant refused any settlement of costs with the landlord as she says he has failed to pay her the money owed to her since the Decision in March 2016.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

**Analysis:**

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

**Director's orders: compensation for damage or loss**

**67** Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

The onus is on the landlord to prove on the balance of probabilities that the tenant violated the Act or tenancy agreement, that this caused him loss and the amount of the loss. I find the tenant breached her fixed term tenancy by vacating before the end of the fixed term. However, I find insufficient evidence that this caused any loss to the landlord or if so, the value of the loss. I find the landlord made good efforts to minimize any loss but there is insufficient evidence of any loss suffered. Although I gave him extensive opportunity in the hearing to verify any losses through consultation, he said he was unable to do so. I find the evidence of the tenant persuasive that the landlord re-rented the unit immediately and suffered no loss as she has correspondence from the new tenant supporting her testimony.

Although the landlord claimed he did not know he would be required to prove amounts of losses, I find he is in the business of renting and is presumed to know the law

regarding residential tenancies. In other law, for example, in a contract dispute in business, an applicant claiming compensation would likewise have to prove his losses. I dismiss the Application of the landlord without leave to reapply.

**Conclusion:**

I dismiss the Application of the landlord in its entirety without leave to reapply. I find he is not entitled to recover filing fees due to his lack of success.

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: August 11, 2016

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Residential Tenancy Branch