



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNR, MNSD, 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 and the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Is the landlord entitled to unpaid rent, loss of income and the filing fee?

### **Background and Evidence**

The tenancy started on June 01, 2014 for a fixed term of 24 months. The monthly rent was \$2,275.00 and prior to moving in the tenant paid a security deposit of \$1,137.50 and a pet deposit of \$1,137.50.

The tenant failed to pay rent on September 01, 2014 and the landlord served the tenant with a ten day notice to end tenancy. The notice was not signed or dated. The tenant did not dispute the notice, did not pay rent and moved out on September 20, 2014.

The tenant stated that he had done some work for the landlord and was seeking payment. The landlord agreed that the tenant had done some repair work in the adjoining suite. The tenant testified that on October 01, 2014, he sent a letter to the landlord which included his forwarding address and a request for payment for services rendered and for the return of the deposits. The landlord denied having received a letter with the tenant's forwarding address. The landlord stated that he made his own enquiries and found the address of the tenant.

The landlord stated that he advertised the availability of the home in his attempts to find a tenant but was unsuccessful until the middle of February when a new tenant was found. The landlord filed copies of the advertisements.

The tenant testified that he had had multiple conversations with the landlord regarding the possibility of the tenant purchasing the rental home. The tenant stated that the landlord informed him that if the tenant did not purchase the home, the landlord would be forced to list it for sale.

The tenant testified that at the end of September after he had moved out a huge for sale sign was erected on the property. The female landlord confirmed that she intended to sell the property and had entered into a contract with a local realtor on October 08, 2014. The house sold in June of 2015.

The male landlord stated that he continued to look for a tenant even though the home was listed for sale. The copies of the advertisements indicate that the landlord was asking for rent in the amount of \$2,450.00 which is \$175.00 more than the rent that the tenant paid.

The landlord stated that since the tenant was in a fixed term tenancy, he is responsible for the loss of income incurred by the landlord until the new tenant was found. The landlord found a new tenant for February 15, 2015 and is claiming a loss of income in the amount of rent for 5.5 months which totals \$12,512.50. The landlord is also claiming the filing fee.

### **Analysis**

The tenant agreed that he did not pay rent for the month of September 2014 and moved out on September 20, 2014. I find that the landlord is entitled to rent for September in the amount of \$2,275.00.

Section 45 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 is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month that rent is payable under the tenancy agreement.

Based on the sworn testimony of both parties, I find that by moving out on September 20, 2014, the tenant breached the terms of the tenancy agreement by ending the tenancy prior to the end date of the fixed term. The landlord is claiming a loss of income that resulted from this breach.

Section 7 of the *Residential Tenancy Act* states that a landlord who claims compensation for loss that results from the tenant's non-compliance with the *Act* or their tenancy agreement must do whatever is reasonable to minimize the loss.

In all cases, the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. In this case, in order to minimize the loss, the landlord had to make efforts to re-rent the unit.

The landlord did make efforts to re-rent the unit but did so at a higher rent than what the tenant was paying. The landlord also listed the rental unit for sale and put a for sale sign on the property. I find that the landlord did not find a suitable tenant for 5.5 months because he jeopardized his chances of finding a tenant by having a "for sale" sign on the property and by raising the asking rent to \$2,450.00 which is \$175.00 more than the rent the tenant was paying and would have paid had the tenancy not ended. Pursuant to *Residential Tenancy Policy Guideline #3*, placing the property on the market for sale will not constitute mitigation.

Based on the above facts I find on a balance of probabilities that it is more likely than not that after the tenant moved out, the rental unit was unavailable for rent and/or difficult to rent because it was listed for sale. Therefore the landlord is not entitled to loss of income for the period of October 01, 2014 to February 15, 2015.

The landlord has proven a portion of his claim and therefore I award the landlord \$50.00 towards the recovery of the filing fee.

Overall the landlord has established a claim of \$2,325.00 which consist of unpaid rent (\$2,275.00) plus the filing fee (\$50.00). The landlord currently holds security and pet deposits in the amount of \$2,275.00. . I order that the landlord retain the deposits 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 \$50.00. 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 in the amount of \$50.00.

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: October 14, 2016

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Residential Tenancy Branch

