



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes MNR MNDC FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for unpaid rent and loss pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant confirmed service of the application for dispute resolution, including the notice of hearing and evidence package with the exception of an additional 7-page evidence package submitted by the landlord on July 25, 2016. The landlord's agent testified that this evidence package was served to both tenants by registered mail on July 14, 2016 and was unclaimed. The landlord provided registered mail tracking numbers as proof of service. The tenant states he was out of town at the time of service. The tenant acknowledged receiving the notification but states the package was no longer available for pick-up by the time he returned. The evidence consisted of a tenancy agreement entered between the landlord and new tenants starting on May 15, 2016. I accept this evidence was deemed served in accordance with section 88 and 90 of the Act.

### Issues

Is the landlord entitled to a monetary award for unpaid rent and loss?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The parties entered into a one-year fixed term tenancy and signed a lease agreement on April 13, 2016. The tenancy was to begin on May 1, 2016 and end on April 30, 2017. The monthly

rent as per the agreement was to be \$1800.00 per month. There was no security deposit paid. Two days prior to the scheduled move-in date, the tenants advised the landlord that they would no longer be moving into the rental unit.

The landlord is claiming loss of rent for the period of May 1-15, 2016 in the amount of \$900.00, as they were not able to re-rent the rental unit until May 15, 2016. The landlord's agent testified that they only had two days notice to try to re-rent the unit and as a result had to advertise the unit at a rate of \$1700.00 for a one-year fixed term versus the \$1800.00 agreement they had with the tenant. As a result, the landlord is also seeking the difference in rent for the remainder of the fixed term lease in the amount of \$1150.00 (\$50.00 for May 15-31<sup>st</sup> + \$100.00/month x 11 months).

The landlord is also claiming mileage costs associated with travelling from Surrey to Chilliwack on two additional occasions to secure new tenants. The amount claimed by the landlord is \$41.40 which is based upon fuel consumption of 18 litres of gasoline during the 150 km round trip at a cost of \$1.15 per litre for gas.

The tenant argues the rental unit was originally advertised at \$1700.00 and the landlord later raised the amount to \$1800.00. The tenant argues that the landlord did not attempt to re-rent the unit at the \$1800.00 rate. The tenant testified he attempted to sublet the rental unit by placing an ad for the unit and had a lot of responses and interest in the rental unit. However he took his ad down and forwarded the responses to the landlord after the landlord requested he take the ad down. The tenant also submits he sent the landlord a mutual agreement to end tenancy but the landlord refused to sign it. The tenant also submits he has not seen evidence that the landlord was not able to re-rent the unit until May 15, 2016 at a rate of \$1700.00 per month.

The landlord replied that they did not raise the rent to \$1800.00 but rather the tenants agreed to this amount at the time of the lease agreement. The landlord requested the tenant to take down ads due to conflicting information in the ads.

### Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

I find the tenants breached their tenancy agreement by ending the lease prior to the expiry of the fixed term. Even though a security deposit had not been paid and the tenants had not taken possession of the rental unit, the tenants were bound by the contractual agreement. The mutual agreement to end tenancy submitted by the tenants is of no effect, as the landlord did not sign

it. The tenant's argument that the landlord increased the rent to \$1800.00 is without merit as the amount of rent agreed to by the parties as per the signed agreement was \$1800.00. The tenant's argument that he attempted to sublet the rental unit is dismissed as there is no evidence that the tenant had found another tenant to sublet the rental unit to and the landlord unreasonably withheld consent to allow the sublet.

I find the Landlord has established a claim for loss of rent of \$900.00 for the period of May 1-15<sup>th</sup>, 2016. I accept the landlord's evidence that they were not able to re-rent the unit for May 1, 2016 on only two days notice. I also find it reasonable that the landlord had to advertise the rental unit at a lesser rate in order to re-rent the unit as soon as possible. As a result, I accept the landlord's claim for loss of rent of \$1150.00 for the remainder of the one-year fixed term. I also accept the landlord's claim for mileage expenses incurred as a result of the tenant's breach. The landlord incurred this expense to re-rent the rental unit and I find the amount claimed to be reasonable. The landlord is awarded \$41.40.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$2191.40.

#### Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$2191.40. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 06, 2016

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Residential Tenancy Branch