



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            OLC, MNR, O

### Introduction

This hearing dealt with cross applications pursuant to the *Residential Tenancy Act* (“*Act*”). The landlord applied for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement, pursuant to section 67; and
- “other” remedy under the *Act*, regulation or tenancy agreement

The tenant applied for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- “other” remedy under the *Act*, regulation or tenancy agreement.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other.

### Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Is the tenant entitled to a monetary order as claimed?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is either party entitled to “other” remedy under the *Act*, regulation or tenancy agreement?

### Background, Evidence

The testimony of the landlords' agent is as follows. The tenancy began on January 1, 2015 for a fixed term of 16 months that ended on April 30, 2016. The landlords' agent testified that the parties entered into another fix term agreement for that was set to expire April 30, 2017. The tenants were obligated to pay \$6000.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$3000.00 security deposit which the landlord holds in trust as of today's hearing. The landlord testified that on October 6, 2016 the tenant sent an email advising that she was moving out by the end of October, 2016. The landlords' agent replied to the tenant and advised her that she was on a fixed term tenancy and that the landlord was not agreeing to end the contract early. The landlords' agent testified that he also advised that the tenant she could be liable for any loss of rent as a result of her ending the tenancy early and without permission.

The landlords' agent testified that he began advertising the unit that same day on craigslist at a lower rate and with a flexible term to entice potential renters. The landlords' agent testified that it was a difficult time of year to rent with a large supply of high end suites on the market. The landlords' agent testified that they took all steps to mitigate the loss and were able to rent the unit for December 1, 2016 for \$4200.00 per month. The landlords' agent is seeking a loss of revenue of \$1800.00 x the six remaining months of the contract November 2016 – April 2017 = \$10,800.00. The landlords' agent testified that although the unit was empty for the month of November, the landlord wanted to be reasonable and only seeks the difference in rent as loss of revenue. The landlords' agent testified that due to a banking error, the tenants postdated cheque for December 2016 was deposited in the landlords account. The landlords' agent confirms that the landlord still has that amount in trust along with the security deposit. The landlords' agent testified that there is an unpaid utilities bill of \$298.57 that is the tenants' responsibility as part of the tenancy agreement.

The landlord is applying for the following:

|    |  |                  |
|----|--|------------------|
| 1. | Loss of Revenue November 2016 – April 2017 | \$10, 800.00     |
| 2. | Unpaid Utilities bill                      | \$298.57         |
| 3. | Minus- Security deposit                    | -\$3000.00       |
| 4. | Minus-December Rent paid                   | -\$6000.00       |
|    |  |                  |
|    |  |                  |
|    | Total                                      | <b>\$2098.57</b> |

The tenants' agent gave the following testimony. The tenants' agent testified that the landlord was dishonest in their actions by making the tenant sign another fixed term contract. The tenants' agent testified that at the expiration of the first contract the tenancy should have become a month to month agreement. The tenants' agent testified that the landlord was aware

that the tenant was seeking to purchase her own home in the coming months yet still forced her to sign another one year term. The tenants' agent testified that the tenant did not seek the return of the security deposit in this application as she felt that was a sufficient remedy to satisfy the landlord for his claim but may seek its recovery at a later date. However, the tenant does want the return of the \$6000.00 rent payment made for December 2016. The tenant's agent testified that the tenant is agreeable to pay the utilities cost.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. Firstly, I address the landlords claim and my findings as follows.

### Loss of Revenue

The tenant had signed a fixed term agreement with the landlord in January 2015. At the conclusion of that contract the landlord asked the tenant if she would sign another contract, which she did. I find that the tenant knowingly and willingly entered into that contract. The tenants' agent has not provided sufficient evidence to show that the tenant was forced or coerced into signing it. In addition, the tenants' agent has not provided sufficient evidence that there was any ambiguity that would cause the tenant to think she was on a month to month term. I am satisfied that the parties entered into a fixed term contract.

I find that the landlord and tenant entered into a fixed term tenancy for the period from May 1, 2016 to April 30, 2017. Subsection 45(2) of the *Act* sets out how a tenant may end a fixed term tenancy:

*A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*

- (a) is not earlier than one month after the date the landlord receives the notice,*
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

The above provision states that the tenant cannot give notice to end the tenancy before the end of the fixed term. If the tenant does, they could be liable for a loss of rent during the period when the unit cannot be re-rented. In this case, the tenant vacated the rental unit on October 31, 2016, before the completion of the fixed term on April 30, 2017. As such, the landlord is entitled to compensation for losses it incurred as a result of the tenant's failure to comply with the terms of his tenancy agreement and the *Act*.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the *Regulation* or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable, to re-rent the premises soon after receiving written notice of the tenant's intention to vacate the rental unit. The landlord posted an online rental advertisement the same day the tenant advised that she was moving out.

I accept the landlord's evidence that this was a slow rental period, particularly during the autumn months. Although the landlord did reduce the rental price and the fixed length term, he was only able to rent the unit for \$4200.00 per month as of December 1, 2016. As such, I am satisfied that the landlord discharged its duty under section 7(2) of the *Act* to minimize its losses.

The landlord seeks six months of rental loss for November 2016 – April 2017 inclusive. Based on my finding that the tenant breached Section 45(2) of the *Act*, the landlord is entitled to the loss of revenue for the four months of November-February for an amount of \$7200.00. Based on the timing of this hearing I find it reasonable and appropriate to include the month of February in that calculation. However, the landlord has made a pre-mature application in regards to the loss of revenue for March and April. As those are dates in the future, I cannot make a finding at this time so I dismiss that portion of his claim with leave to reapply.

### Utilities

The tenants' agent advised the tenant accepts full responsibility for the utilities cost. Based on that acknowledgment I find that the landlord is entitled to \$298.57.

The landlords' total entitlement is \$7498.57.

The tenant has not been successful in her application.

Although neither party applied for the security deposit, both parties confirmed the amount and that they seek to be granted that amount through this decision. I am mindful of the following,

Residential Tenancy Policy Guideline 17 addresses the issue as follows:

*"The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:*

- a landlord's application to retain all or part of the security deposit; or*
- a tenant's application for the return of the deposit.*

*unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return."*

Conclusion

The tenants' application is dismissed.

The landlord has established a claim for \$7498.57. The landlord holds \$9000.00 in deposits and rental payment. I order that the landlord retain \$7498.57 from that amount and that the balance be returned to the tenant in the amount of \$1501.43. I grant the tenant an order under section 67 for the balance due of \$1501.43. This order may be filed in the Small Claims 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: January 18, 2017

---

Residential Tenancy Branch