



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Summit Drive Investments Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for a monetary order for unpaid rent or utilities and to recover the filing fee from the tenants for the cost of the application.

An agent for the landlord attended the hearing and gave affirmed testimony. The landlord's agent also called one witness who gave independent affirmed testimony. One of the tenants also attended, gave affirmed testimony and the tenants were also represented by an agent. The landlord's agent and the tenants' agent were given the opportunity to question the parties and the witness, and to give submissions.

No issues with respect to service or delivery of documents or evidence were raised and all evidence provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Has the landlord established a monetary claim as against the tenants for unpaid rent?

### Background and Evidence

**The landlord's agent** (KC) testified that this fixed-term tenancy began on August 15, 2015 and was to expire on July 31, 2016 at which time the tenants were required to vacate the rental unit or enter into a new tenancy agreement with the landlord. The tenants actually vacated the rental unit on April 24, 2016. Rent in the amount of \$1,475.00 per month was payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$737.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a 2 bedroom apartment in a 2-building complex containing 88 rental units, and a copy of the tenancy agreement has been provided.

The landlord's agent further testified that the landlord was informed by a relief caretaker that on April 24, 2016 one of the tenants offered the keys to the rental unit saying the tenants were moving out, but because he was a relief caretaker, he didn't accept the keys. The landlord received an email from one of the tenants dated April 23, 2016, which was received by the landlord on April 25, 2016 stating that the tenants had moved out due to a physical condition of one of the tenants. Two notes from physicians were left in the rental unit, copies of which have been provided.

There were at least 4 vacancies at that time of 2-bedroom units, and the rental unit was shown 8 times after the tenants had vacated. The landlord advertises through the landlord's own website as well as on a local university website, at \$1,475.00 per month as well as for other vacancies. A large banner was also on the fence. The rental unit was not able to be re-rented until September, 2016.

The landlord claims unpaid rent in the amount of \$1,475.00 per month for the months of May, June and July, 2016, totalling \$4,425.00, as well as \$25.00 for a returned rent cheque dishonoured by the tenants' financial institution. The tenancy agreement provides for that, and the landlord seeks \$4,450.00 and recovery of the \$100.00 filing fee.

The tenants have not provided the landlord with a forwarding address in writing.

**The landlord's witness** (BC) testified that she is a property manager at the rental complex, and received notice from the tenant on April 25 by email that the tenants had moved out. The rent cheque for May was not honoured and because the tenant signed a fixed term lease, the tenants are responsible for the payment of rent till the lease expires. The witness sent a notice to the tenants, a copy of which has been provided, stating that the tenants were responsible for rent until the end of the fixed term and that the landlord's agents would assist in finding a replacement tenant. However, the tenants did not keep in touch, no one returned the landlord's calls and the situation was left hanging. The tenants moved out and left. The rental unit was first shown to prospective tenants in June. An advertisement was placed on the landlord's website, and at the local university website, and was updated daily.

The witness showed the rental unit 8 times between when the tenants moved out and September. The witness also testified that the landlord's agents went in to see the shape the rental unit was in, and didn't show it till the end of June, and under the direction of the witness' supervisor, the rental unit was not shown in May at all. It was shown after the repairs, as noted on the move-out condition inspection report were completed, such as cleaning and paint touch-ups which were completed near the end of July.

The witness was also present for the move-out condition inspection with the on-site manager on July 30, 2016 but does not remember why the landlord's agents waited another month to do the inspection report. Because the rental unit was still technically tenanted, the witness was told that was still the tenants' occupancy and the witness did not enter the rental unit until toward the end of June. Under The rental building opened in September, 2014 and advertisements have been running for rentals since then and are still running today. There has been a 100% occupancy as well as a wait-list in January, 2017, but units become available so advertisements continue to run. Presently, there are 4 vacant suites.

**The tenant** testified that while attending school, the tenant and a friend rented the rental unit, but the tenant became ill in March and had to drop out of school and move back with her parents in April as suggested by the tenant's doctor. A note from the physician has been provided.

The tenant attempted to notify the landlord on April 24, by sending an email and speaking to the building manager who said he could not accept the keys and suggested that the tenant leave the keys in a drawer. The tenant did so with a physician's note and the tenant's forwarding address.

**The landlord's agent submits** that the landlord did its due diligence in trying to re-rent. Four units were vacant at the time. The landlord asks tenants to help find a new tenant to reduce costs.

**The tenants' agent submits** that the landlords did not mitigate, having not even entered the rental unit until the end of June, 2 months after the tenancy ended. The landlord sits on the fence about whether or not the rental unit was abandoned. The landlord's agent testified that it was shown 8 times between May and September, but wasn't shown until July. The advertisements are generic only. Further, both tenants have notes from physicians.

The tenants have not requested return of the security deposit from the landlord.

For clarity, there are 2 tenants that rented the rental unit and the other 2 people shown as tenants in the tenancy agreement are co-signers.

### Analysis

There is no dispute that the parties entered into a fixed-term tenancy agreement to expire on July 31, 2016 for rent in the amount of \$1,475.00 per month, or that the

tenants moved out on April 24, 2016. The tenants gave some notice that they were vacating early due to advice from physicians. The *Residential Tenancy Act* specifies how a tenancy ends, and contains a provision for escaping family violence as a reason to end a fixed term tenancy early, but not for physical illness.

The landlord claims \$4,425.00 being the monthly rent from May 1, 2016 to July 31, 2016, the end of the fixed term, and the rental unit re-rented for September, 2016. I have reviewed the evidentiary material of the parties, and find it somewhat perplexing that the landlord's agent and witness both testified that the tenants were responsible for the payment of rent till the end of the fixed term, but the landlord would assist in finding a new tenant. In order to be successful, the onus is on the landlord to establish that the landlord did what was reasonable to mitigate the loss suffered as a result of the tenants' failure to honour the terms of the tenancy agreement.

The landlord's agent testified that the rental unit was advertised through the landlord's own website and a large banner was on the fence. It was also advertised on the local university website for the same amount of rent. Other units were also advertised for that amount and for \$1,525.00 per month, and there were at least four 2-bedroom units vacant. The landlord's witness testified that the rental unit was shown 8 times between the time the tenants moved out, April 24, 2016 and September, 2016, but did not enter the rental unit until close to the end of June, and the move-out condition inspection report was completed on July 30, 2016. It took the landlord 2 months to enter the rental unit at all after knowing the tenants had vacated, and another month before the condition inspection. If the landlord showed the rental unit 8 times, clearly that didn't start until 2 months after the landlord knew the tenants had vacated, and the landlord's witness testified that it wasn't shown at all in May under the direction of her supervisor.

In the circumstances, I am not satisfied that the landlord did what was reasonable to mitigate. The landlord knew before the end of April that the tenants had vacated, directed the rental unit to not be shown in May, did not enter or show the rental unit until the end of June, and waited an additional month to complete the move-out inspection and make repairs. I accept that there were other vacancies in the rental complex, but I do not accept that the landlord attempted to re-rent this unit given that it was not entered, shown or repaired until the end of the fixed term.

The landlord's application for a monetary order for unpaid rent is dismissed.

The landlord also claims N.S.F. fees for the return of the tenants' rent cheque for May, 2016. The *Act* allows a landlord to charge for such a fee if contained in the tenancy agreement. I have reviewed the tenancy agreement which provides for a \$25.00 fee and the cost charged by the landlord's financial institution. I have reviewed the other

evidentiary material and have not located any evidence of the cost the landlord was charged by the landlord's financial institution. However, the tenants do not deny that the cheque was returned, and I find that the landlord has established a claim in the amount of \$25.00.

Since the landlord has been partially successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

The landlord currently holds a security deposit in the amount of \$737.50 and I order the landlord to retain \$125.00 of that and I order the parties to deal with the balance of the security deposit in accordance with Section 38 of the *Residential Tenancy Act*.

### Conclusion

For the reasons set out above, the landlord's application for a monetary order for unpaid rent or utilities is hereby dismissed without leave to reapply.

I hereby order the landlord to keep \$125.00 of the security deposit and I order the parties to deal with the balance of the security deposit in accordance with the *Residential Tenancy Act*.

This order is final and binding and may be enforced.

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: March 31, 2017

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Residential Tenancy Branch