



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SUTTON ADVANTAGE PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, MNR, FF (Landlord's Application)  
                             MNSD, FF (Tenant's Application)

### Introduction

This hearing convened as a result of cross applications wherein the parties each sought monetary compensation from the other, orders relating to the Tenant's security deposit and recovery of the filing fee.

The hearing was conducted by teleconference on April 26, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. What should happen to the Tenant's security deposit?
3. Should either party recover the filing fee?

### Background and Evidence

Introduced in evidence was a residential tenancy agreement which indicated this tenancy began September 23, 2016 for a fixed term to January 17, 2017. Rent was

payable in the amount of \$1,350.00 payable on the first of the first of the month. The Tenant paid a security deposit in the amount \$675.00.

G.H. confirmed that he performed a move in condition inspection report. A copy was provided in evidence.

On September 30, 2016 the Tenant called G.H. and complained about the noise from the lower unit.

G.H. confirmed that he dealt with the noise issues immediately, as he spoke to the downstairs tenant and told her that she was disturbing the Tenant upstairs. He also stated that as the Tenant made allegations of possible drug dealing, he parked outside the rental unit and watched the property for four hours, during which he only saw one person attend the rental.

G.H. stated that within a day or two of that party, the Tenant stated that she was moving out. G.H. stated that she may have sent him an email regarding her desire to end the tenancy, but he could not be sure. In any case, he denied receiving a written notice to end tenancy.

G.H. stated that the Tenant vacated the rental unit by October 8, 2016 and on that date the parties completed a move out condition inspection report.

G.H. stated that the Tenant failed to pay rent for October 2016 and in response he issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on October 5, 2016 (the "Notice"). The effective date of the Notice was October 16, 2016.

G.H. stated that he started to advertise the property as soon as the move out condition inspection was completed. He stated that he advertised for a few days at \$1,350.00 and although there was a lot of interest, not a lot of people were interested in moving in because the tenancy was for a shortened time as the owners were planning to move back into the property in March of 2017.

G.H. confirmed that he re-rented the unit for \$1,100.00 for November 1, 2016 such that he sought unpaid rent in the amount of \$1,350.00 for October 2016, \$250.00 per month for November 2016, December 2016 and January 2017 for a total of \$2,100.00 in addition to the filing fee of \$100.00. He confirmed that he continues to hold the Tenant's security deposit.

The Tenant testified as follows. She confirmed that she did not issue a written notice to end her tenancy in September or October 2016.

The Tenant stated that she was very upset because she had just moved across the province, and then discovered that she was living above drug dealers, could not provide a safe home for the man she was caring for in her rental unit, did not have internet, the Landlord was in a different city and in all circumstances she realized the rental unit was not appropriate. She further stated that on October 3-5 she spoke to G.H. and he confirmed she could move out and he would simply re-rent it.

She further confirmed that by October 8, 2016 she had moved all her items out of the rental unit. She further confirmed that when she met with G.H. to do the move out condition inspection report he served her with the 10 Day Notice.

The Tenant stated that she did not believe she should be forced to pay for the rental unit as while she signed a contract, it was for a peaceful and safe place to live, and that's not what she got.

The Tenant further stated that she suspected the downstairs renters were selling drugs out of the rental unit as she observed people coming and going at all hours and marijuana smoke from the downstairs unit even though she taped up the vents. She also stated that she spoke to a local police officer who told her not to make friends with the downstairs renters and to simply keep her distance.

The Tenant also stated that she believed the Landlord did not make their best effort to re-rent the unit as it was advertised as being available November 1, 2016 when in fact it was available October 8, 2016. She further noted that G.H. advertised the rental unit for \$1,100.00, not the full amount of rent she was paying. A copy of this ad was provided in evidence.

In reply, G.H. stated that he recalls speaking to the Tenant about the fact that she wasn't happy living there and he would do his best to make it "as painless as possible" for her. He stated that he did not pursue the liquidated damages as provided for in clause 5 of the tenancy agreement, nor did not ask her to pay the utilities.

G.H. also stated that the Tenant made no effort to try to rent the unit either, or otherwise minimize her loss.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

In a claim for damage or loss under the *Act* or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

Section 7(1) of the *Act* states that if a landlord or tenant does not comply with the *Act*, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

A tenancy must be ended in accordance with section 44 which reads as follows:

**44** (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [*tenant's notice*];

(i.1) section 45.1 [*tenant's notice: family violence or long-term care*];

(ii) section 46 [*landlord's notice: non-payment of rent*];

(iii) section 47 [*landlord's notice: cause*];

(iv) section 48 [*landlord's notice: end of employment*];

(v) section 49 [*landlord's notice: landlord's use of property*];

(vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Although the Tenant did not give written notice to end her tenancy, I find that the Tenant ended the tenancy when she vacated the rental unit on October 8, 2016.

Section 45(2) deals with situations where a Tenant gives notice in a fixed term tenancy and reads as follows:

- 45 (2) 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,
- (3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.
- (4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

While not specifically argued, the Tenant suggested that she should not be bound by the fixed term due to the disturbance of the downstairs renters. Although section 45(3) allows a Tenant to end a fixed term tenancy in the event the Landlord fails to comply with a material term, the Tenant must give the Landlord a reasonable opportunity to correct the situation. I find the Tenant failed to give the Landlord any such opportunity.

I therefore find that the Tenant breached the fixed term tenancy agreement by vacating the rental unit on October 8, 2016. I further find the Tenant has breached section 45(2) of the *Act* as the earliest date she could have legally ended the tenancy was January 31, 2017 as stated in the tenancy agreement.

Since the Tenant failed to comply with the *Act* and the fixed term tenancy by not given the landlord sufficient notice to end the tenancy, the Landlord is entitled to an amount sufficient to put the Landlord in the same position as they would have been had the

Tenant not breached the *Act*. This includes compensating the Landlord for any loss of rent up to the earliest time that the Tenant could have legally ended the tenancy.

Section 7(2) of the *Act*, requires the party who claims compensation for loss to do whatever is reasonable to minimize the loss.

I accept G.H.'s testimony that he immediately began advertising the rental unit at \$1,350.00. I further accept his testimony that it was difficult to find a renter as the rental period was reduced due to the Landlord wishing to reside in the rental in March of 2017. I find the Landlord made reasonable efforts to minimize the loss. Therefore, I find the Landlord is entitled to recover the loss of rent in the amount of **\$2,100.00**.

### Conclusion

Therefore, I find the Landlord is entitled to recover the loss of rent in the amount of **\$2,100.00**.

As the Landlord has been substantially successful, I also award him recovery of the **\$100.00** filing fee.

I authorize the Landlord to retain the Tenant's \$675.00 security deposit as partial payment of the amount awarded and grant him a Monetary Order for the balance due in the amount of **\$1,525.00**.

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: April 28, 2017

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Residential Tenancy Branch