



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MNSD, MNDC

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") 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;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

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 award for loss arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

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

### Background, Evidence

The landlord's testimony is as follows. The tenancy began on September 1, 2016 and although it was to be for a fixed term of one year, the tenancy ended early on January 31, 2017. The tenants were obligated to pay \$2000.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$1000.00 security deposit. The landlord testified that the tenant offered to help rent the unit and suggested two

separate parties; however neither of those worked out. The landlord testified that the tenant caused him delay in renting the unit by not being clear or timely in providing the potential parties intent. The landlord testified that he made all efforts to rent the unit from January 15, 2017 but was unable to rent it for February 1, 2017. The landlord testified that he rented the unit for \$1800.00 starting on March 1, 2017. The landlord is seeking the loss of revenue for February and the loss of \$200.00 x four subsequent months.

The landlord is applying for the following:

1.	Loss of Revenue February 2017	\$2000.00
2.	Loss of Revenue March- June	800.00
3.	Filing fee	100.00
4.		
5.		
6.		
	Total	<b>\$2900.00</b>

The tenant gave the following testimony. The tenant testified that he agreed with most of the landlords' testimony. The tenant testified that the one thing he didn't agree with was that the landlord was attempting to rent the unit for \$2150.00 which he felt was too high. The tenant testified that if the landlord had tried to rent it at the original rate of \$2000.00 the landlord would have been successful in renting it.

### 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. The principal aspects of the landlord's claim and my findings around each are set out below.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that the landlord and tenant entered into a fixed term tenancy for the period from September 1, 2016 to August 31, 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 January 31, 2017, before the completion of the fixed term on August 31, 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 and after receiving the tenants permission on January 11, 2017 that they could start to advertise the unit. The landlord posted an online rental advertisement from that date. The landlord made efforts to re-post and renew the advertisements to preserve priority on the website. I accept the landlord's evidence that this was a slow rental period, particularly during the winter months, and although the landlord had numerous inquiries about the property, he was unsuccessful in renting it. Although the landlord did not reduce the rental price from the outset or the fixed length term, the landlord explained the positive features of this unit to justify the price as well as the security of the fixed term lease. As such, I am satisfied that the landlord discharged its duty under section 7(2) of the *Act* to minimize its losses.

Accordingly, I find that the landlord is entitled to \$2,800.00 for a loss of February revenue and \$200.00 x 4 months for March 2017- June 2017.

The landlord is also entitled to the recovery of the \$100.00 filing fee for a total award of \$2900.00.

Conclusion

The landlord has established a claim for \$2900.00. I order that the landlord retain the \$1000.00 security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1900.00. 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: June 20, 2017

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Residential Tenancy Branch