



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** FF MNR MNDC MNSD

### **Introduction**

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

- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- and a monetary order for money owed or compensation monetary loss or money owed under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

While the landlord's agent, MM ('landlords'), attended the hearing by way of conference call, the tenants did not. I waited until 2:10 p.m. to enable the tenant to participate in this scheduled hearing for 2:00 p.m. The landlord's agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing the landlord's agent requested the landlord's name be amended to reflect the full, proper spelling of his name. The name was cut off during the online application, and as a result is missing the last two letters. I find the request to be reasonable, and I granted the landlord's request to amend the spelling of the name.

The landlord's agent testified that the tenants were served with the landlord's application for dispute resolution hearing package ('Application') and evidence on February 16, 2017, by way of registered mail. The landlord provided Canada Post tracking numbers in their evidence package. In accordance with sections 88, 89 and 90 of the Act, I find that the tenants were deemed served with the landlord's application and evidence on February 21, 2017, five days after its registered mailing.

### **Issue(s) to be Decided**

Is the landlord entitled to monetary compensation for unpaid rent and losses?

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

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

### **Background and Evidence**

The landlord's agent testified regarding the following facts. This fixed-term tenancy began on December 1, 2016, and was to end on November 30, 2017. Monthly rent was set at \$2,200.00, and the landlord collected a security deposit of \$1,100.00, which the landlord still holds. A copy of the tenancy agreement was included in the landlord's evidence.

The tenants moved out ten months early, on January 31, 2017, after giving notice on January 17, 2017. The landlord mitigated their losses, and was able to find a new tenant to fill the vacancy. The suite was re-rented for February 14, 2017 for the same monthly rent. The landlord's agent testified that the suite was advertised on January 17, 2017 by him after getting the tenants' notice.

The landlord requested half a month's rent as compensation for the monetary loss associated with the tenants' failure to abide by the *Act* and tenancy agreement. The landlord also applied to recover the cost of the leasing fee charged by the property management company in the amount of \$1,155.00 plus the \$100.00 filing fee for a total monetary claim of \$2,355.00.

### **Analysis**

Section 44 of the *Residential Tenancy Act* reads in part 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:...

*(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;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

**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, that rent is payable under the tenancy agreement.*

The landlord's agent provided undisputed evidence at this hearing that the tenants had moved out before the end of this fixed-term tenancy. I find that the tenants had moved out prior to the end of this fixed term tenancy, in a manner that does not comply with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenants obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. No applications for dispute resolution have been filed by the tenants in regards to this tenancy. The tenants moved out ten months earlier than the date specified in the tenancy agreement.

The evidence is clear that the tenants did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenants vacated the rental unit contrary to Sections 44 and 45 of the *Act*. The evidence of the landlord's agent is that he was able to re-rent the suite, and the landlord is only claiming half the rent as compensation for his loss. I am satisfied that the landlord had made an effort to mitigate the tenants' exposure to the landlord's monetary loss of rent for February 2017, as is required by section 7(2) of the *Act*. I, therefore, allow the landlord's claim for a monetary order for rental differential loss in the sum of \$1,100.00 for half a month of lost rental income due to the early termination of this tenancy.

The landlord requested, in their monetary, order to recover the cost of the "leasing fee" in the amount of \$1,155.00. Condition 13 of the addendum to the written tenancy agreement signed by both parties states the following: "EARLY TERMINATION OF FIXED TERM TENANCY: the tenant understands and agrees that should the tenant want to move before the end of a fixed term tenancy, the tenant will have to continue to pay rent until the end of the term unless the landlord agrees in writing that the tenant can end the tenancy early or can assign or sublet the unit, if the landlord is able to mitigate the potential loss by renting out the premises. **The tenant will be responsible for all costs incurred by the landlord to mitigate potential loss.** This is not a penalty".

I find that it is clear that the tenants should be aware that all costs incurred by the landlord in mitigating potential loss in relation to the early termination of this fixed term tenancy would be the responsibility of the tenants. In this case, the landlord incurred a loss of \$1,155.00 in employing the services of a property manager to re-rent the suite as soon as possible. On this basis, I allow the landlord's monetary claim for \$1,155.00 to recover the cost of locating a new tenant.

The landlord continues to hold the tenants' security deposit of \$1,100.00. In accordance with the

offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit of \$1,100.00 in partial satisfaction of the monetary claim.

As the landlord was successful in their application, I am allowing the landlord to recovery the filing fee from the tenant.

**Conclusion**

I order the landlord to retain the tenants' security deposit of \$1,100.00 in satisfaction of the monetary award for the tenants' failure to comply with sections 44 and 45 of the *Act*.

I issue a Monetary Order in the amount of \$1,255.00 in the landlord's favour, which allows the landlord to recover the filing fee for this application, as well as the leasing fee paid by the landlord.

The landlord is provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible. Should the tenant(s) 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: July 21, 2017

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Residential Tenancy Branch