



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes FF, MNR, MNDC, MNSD

### Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$975 for loss of rent
- b. An order to retain the security deposit
- c. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The parties failed to exchange documents with each other and failed to provide documents to the Residential Tenancy Branch.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served by mailing, by registered mail to where the tenant resides on March 17, 2017. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to A Monetary Order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

### Background and Evidence

The parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on September 1, 2016 and end on August 31, 2017. The rent was \$1300

per month payable in advance on the first day of each month. The tenant paid a security deposit of \$650 at the start of the tenancy.

At the end of November the tenant advised the landlord that he wished to move out on January 1, 2017. The landlord responded saying she would assist him trying to find a person to take over the lease. However, the landlord made it clear he was responsible to pay the rent for the unexpired fixed term.

The tenant testified the landlord failed to assist him trying to find someone to take over the lease. His efforts included a couple to move in but she refused to rent it to a couple. He also included another person to move in but the landlord refused to rent it to that person because she was pregnant. The tenant vacated the rental unit at the end of December. However, he paid the rent for January 2017. At the end of January he advised the landlord that he was no longer going to continue to find someone as her refusal was discriminatory and contrary to the law.

The landlord advertised the suite asking for a rent of \$1150 per month. A new tenant signed a 6 month lease ending that provided the tenancy would end on August 31, 2017 with a rent of \$1150 per month. The tenancy started on February 15, 2017 and the new tenant paid one half of a month rent.

The landlord testified she was not prepared to rent the rental unit to more than one person because of she had one water tank that could accommodate only one person. Further, she testified that the tenant had arranged with the sub tenant that her rent would be \$950 per month. Had she accepted that person proposal her claim against the tenant in this hearing would be greater substantially greater.

The landlord makes the following claims:

- \$650 for loss of rent for February 1 – 15, 2017
- \$975 for the short fall of rent for the period February 16, 2017 to August 31, 2017 (6 ½ months multiplied by \$150 per month).

Analysis - Monetary Order and Cost of Filing fee:

The evidence presented by both parties was not satisfactory. Neither party presented documents that would assist in the determination of this case. For example, the landlord failed to present the tenancy agreement entered into with the subsequent tenant, her efforts to mitigate her loss by attempting to find a new tenant, documents which might establish why advertising for a reduced rate was reasonable. The tenant failed to present evidence to prove the allegations made as to why the landlord refused to rent it to prospective tenants.

Section 7 of the Act states as follows:

### **Liability for not complying with this Act or a tenancy agreement**

7 (1) if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss

After carefully considering all of the evidence I determined the landlord has established a claim against the tenant in the sum of \$650 for loss of rent for the period February 1, 2017 to February 15, 2017. The tenant advised the landlord at the end of January that he would no longer be looking for prospective tenants. It is not reasonable to expect that a landlord would find someone to move in for February 1, 2017.

However, I determined the landlord failed to prove that she has sufficiently mitigated her loss for the period from February 15, 2017 to August 31, 2017 for the following reasons:

- The landlord failed to present documentary evidence her advertisements and efforts to re-rent the rental unit.
- The landlord did not dispute the allegation of the tenant that she did not advertise for \$1300 per month but rather advertised for \$150 less.
- I infer the landlord had the expectation that she could make up the shortfall from claiming against the tenant. The tenancy agreement with the new tenant was a fixed term 6 month tenancy ending at the end of August 2017. The landlord was quick to claim the 6 month shortfall.
- The landlord failed to present evidence that she was acting reasonably in attempting to mitigate her loss and that that these decision was based on market conditions.

As a result I dismissed the landlord's claim of loss of rent for the period February 15, 2017 to August 31, 2017 as the landlord failed to present sufficient evidence to prove she has taken all reasonable measures to mitigate her loss.

### **Monetary Order:**

As a result I ordered that Tenant pay to the landlord the sum of \$650 plus \$50 for the cost of the filing fee (reduced to reflect the limited success of the landlord) for a total of \$700.

Security Deposit:

I determined the security deposit plus interest totals the sum of \$650. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$50.

Conclusion:

I ordered that the landlord shall retain the security deposit of \$650. I further order the Tenant pay to the Landlord the sum of \$50.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

**This decision is final and binding on the parties.**

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: August 14, 2017

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Residential Tenancy Branch