



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 614472 SASKATCHEWAN LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** FF MNDC MNSD

### **Introduction**

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

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- and a monetary order for money owed or compensation for damage or loss 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, NM, attended the hearing by way of conference call, the tenants did not. I waited until 2:13 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.

Rule 7.3 of the Rules of Procedure provides as follows:

### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The landlord's agent testified that the tenant was served with the landlord's application for dispute resolution hearing package on April 24, 2017, by way of registered mail to the forwarding address provided by the tenant. The landlord's agent provided a Canada Post tracking number during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on April 29, 2017, five days after its registered mailing.

Although the landlord applied for a monetary Order of \$675.00 in their initial claim, the landlord indicated in the hearing that the security deposit was in fact \$750.00 and not \$575.00, and requested to amend their monetary claim to reflect this error. I have accepted the landlord's request to amend their original application from \$675.00 to \$850.00 to reflect the correction.

**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 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 and Evidence**

This fixed term tenancy began on October 5, 2016 with monthly rent set at \$1,500.00. The landlord collected a security deposit in the amount of \$750.00, which they still hold. This was a fixed term tenancy which was to end on September 30, 2017. The tenant moved out on February 4, 2017 prior to the end of this tenancy.

The landlord mitigated their losses, and was able to find a new tenant to fill the vacancy. The suite was re-rented for March 16, 2017 for the same monthly rent of \$1,500.00. The landlord testified that the tenant dropped off their keys on February 4, 2017, and failed to pay rent for February 2017, and failed to give any notice prior to moving out.

The landlord is applying to keep the tenant's security deposit of \$750.00 in satisfaction of the monetary loss incurred due to the tenant's failure to comply with the *Act*. The landlord is also applying to recover the filing fee for this application.

**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, sworn testimony that the tenant 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 tenant 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 tenant in regards to this tenancy. The tenant moved out eight months earlier than the date specified in the tenancy agreement.

The evidence is clear that the tenant did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenant vacated the rental unit contrary to Sections 44 and 45 of the *Act*. The evidence of the landlord is that they were able to re-rent the suite, and the landlord is only claiming \$750.00 for the lost rental income for February 2017.

I am satisfied that the landlord had made an effort to mitigate the tenant's exposure to the landlord's monetary loss of rent for February 2017, as is required by section 7(2) of the *Act*. Accordingly, I find that the landlord is entitled to a monetary order in the amount of \$750.00 in satisfaction of the lost rental income due to the tenant's failure to comply with sections 44 and 45 of the *Act*.

I find that the landlord's Application has merit and that the landlord is entitled to recover the fee for filing this Application.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenant's security deposit plus applicable interest in satisfaction

of the monetary claim. Over the period of this tenancy, no interest is payable on the security deposit.

### **Conclusion**

I issue a Monetary Order in the amount of \$100.00 in the landlord's favour under the following terms which allows the landlord to retain the security deposit in satisfaction of the landlord's monetary claim:

<b>Item</b>	<b>Amount</b>
Monetary Claim for Lost Rental Income due to tenant's failure to comply with sections 44 and 45 of the <i>Act</i>	\$750.00
Filing Fee	100.00
Security Deposit	-750.00
<b>Total Monetary Order</b>	<b>\$100.00</b>

The tenant(s) must be served with 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: September 18, 2017

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Residential Tenancy Branch