



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TOTAL CONCEPT DEVELOPMENTS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF

### Introduction

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

- a monetary order for unpaid rent and for damage to the unit pursuant to section 67;
- 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;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlord served the tenant with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on May 5, 2017. Both parties also confirmed that the tenant served the landlord with his submitted documentary evidence via Canada Post Registered Mail on September 14, 2017. Neither party raised any issues regarding the late submission of evidence. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act. Both parties are deemed sufficiently served as per section 90 of the Act.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage, for unpaid rent and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

### Background and Evidence

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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on February 20, 2016 on a fixed term tenancy ending on August 31, 2016 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated February 20, 2016. The monthly rent was \$1,250.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$625.00 was paid.

The landlord seeks a monetary claim of \$1,283.60 which consists of:

\$1,250.00	Loss of Rental Income, May 2017
\$33.60	Damage, Replacement of Broken light shade

The landlord claims that the tenant gave notice to end the tenancy on April 3, 2017 and that upon being notified the landlord immediately began advertising the rental premises, but was unable to re-rent the premises until June 1, 2017. The tenant disputed the landlord's claim stating that notice to end the tenancy was provided on April 6, 2017, but that a request to the landlord was made on April 3, 2017 to allow the tenant to provide late notice. Both parties have submitted in support of the claims copies of email exchanges regarding the notice to end tenancy.

The landlord also claims that upon move-out the tenant damaged a light cover which the landlord suffered a replacement cost of \$33.60. The tenant confirmed causing the light cover to be damaged during his tenancy and accepts this portion of the landlord's claim.

The landlord provided details that another unit was posted for rent in an ad on March 28, 2017 which was edited to include the advertisement of the tenant's rental unit on April 6, 2017. The tenant disputes that the landlord made reasonable efforts to re-rent the unit stating that the landlord did not advertise the unit for rent until April 20, 2017 as shown by a submitted copy of the advertisement by the tenant. The landlord in response has provided a copy of her calendar which shows a scheduled appointment to show the tenant's rental unit on April 18, 2017. The landlord also provided in support of this claim a copy of an email from the landlord to the tenant advising of a showing on April 18, 2017.

### Analysis

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.

The tenant has confirmed and accepted the landlord's second item of claim for replacement of a broken light shade for \$33.60. As such, this portion of the claim is granted to the landlord.

Section 45 of the Act states in part that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

In this case, I accept the undisputed affirmed evidence of both parties and find that the tenant provided notice to end the tenancy. The landlord claims that she was first advised of the tenant's notice to end tenancy on April 3, 2017. The tenant claims that written notice to end the tenancy was given to the landlord on April 6, 2017. In either case, it is clear that the tenant failed to provide proper 1 months' notice ending on April 30, 2017.

Policy Guideline #5, Duty to Minimize Losses states in part,

Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss<sup>1</sup>. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring...

Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. **The party who suffers the loss need not do everything possible to minimize the loss**, or incur excessive costs in the process of mitigation.

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed.

In this case, the tenant claims that the landlord failed to make reasonable efforts to minimize the loss by immediately advertising the rental premises. The tenant claims

that the landlord did not in earnest advertise the rental unit until April 20, 2017. The landlord instead claims that upon being notified on April 3, 2017, the landlord edited an existing ad to include the tenant's rental unit and later advertised the rental unit in a separate ad on April 20, 2017. I accept the evidence of both parties and find in the circumstances that the landlord has made reasonable efforts to minimize the possible losses by editing the existing ad from March 28, 2017 on April 6, 2017. As such, I find that the landlord has provided sufficient evidence that reasonable efforts were made to minimize the possible losses and has established a claim for the loss of rental income of \$1,250.00.

The landlord having been successful is entitled to recovery of the \$100.00 filing fee.

The landlord has established a total monetary claim of \$1,383.60. In offsetting this claim, I authorize the landlord to retain the \$625.00 security deposit currently held by the landlord.

### Conclusion

The landlord is granted a monetary order for \$758.60.

This order must be served upon the tenant. Should the tenant fail to comply with the 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 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: October 03, 2017

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Residential Tenancy Branch