



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding IMH POOL XIV and METCAP LIVING  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MNDC, MNSD, FF

### Introduction

This hearing dealt with a landlord's application for a Monetary Order for unpaid and/or loss of rent; and, authorization to retain the tenant's security deposit. The tenant did not appear at the hearing. The landlord stated that the hearing documents were sent to the tenant via registered mail at his forwarding address on June 29, 2017. The landlord provided the following proof of service: an email the tenant sent on June 13, 2017 with two different unit numbers provided in his forwarding address; the landlord's response via email on June 22, 2017 asking the tenant to clarify which unit number to use; two registered mail receipts, including tracking numbers, to demonstrate the landlord sent a copy of the hearing documents to both addresses the tenant provided. The landlord testified that both registered mail packages were returned to sender. Canada Post indicates that the packages were returned to sender since they went unclaimed by the recipient. Pursuant to section 90 of the Act, a person is deemed to have received documents five days after mailing, even if the recipient refuses to accept or pick up their mail. I was satisfied the landlord sent the hearing packages to the tenant at both forwarding addresses he provided to the landlord and I deemed the tenant to have received the packages five days after mailing. Accordingly, I continued to hear from the landlord without the tenant present.

### Issue(s) to be Decided

1. Is the landlord entitled to recover unpaid and/or loss of rent from the tenant?
2. Is the landlord authorized to retain the tenant's security deposit?

### Background and Evidence

The parties executed a written tenancy agreement for a fixed term tenancy set to commence on May 1, 2016 and expire on April 30, 2017. The tenant paid a security

deposit of \$685.00 and was required to pay rent of \$1,370.00 on the first day of every month.

The tenant gave the landlord notice of his intent to end the tenancy approximately one month before vacating the rental unit at the end of December 2017. The landlord submits that the tenant was notified that he would be breaking his lease and would be held responsible for rent for the remainder of the fixed term. The tenant indicated he did not agree with the landlord's position and proceeded to move-out.

The landlord submitted that the landlord commenced efforts to re-rent the unit by posting advertisements on multiple websites and showed the unit several times to prospective tenants in January 2017 but did not succeed to re-rent the unit until April 2017. The landlord attributed the vacancy to a slower time of year and explained that the rental market often picks up in the springtime. The landlord testified that the unit was re-rented starting in April 2017 at a monthly rent of \$1,480.00. The landlord explained that rents for the building have increased due to the rental market and the landlord has improved many of the building amenities. The landlord limited its claim to loss of rent against the tenant to two months: January 2017 and February 2017.

### Analysis

Based on the unopposed evidence before me, I provide the following findings and reasons.

Under section 26 of the Act, a tenant is required to pay rent when due under the terms of their tenancy agreement. Upon review of the tenancy agreement provided as evidence, I find the tenant was obligated to pay rent of \$1,370.00 on the first day of every month.

Parties may agree to have a periodic tenancy or a fixed term tenancy and section 13 of the Act requires that the tenancy agreement specify the term of the tenancy. Upon review of the tenancy agreement provided to me as evidence, I find the parties had a fixed term tenancy agreement set to expire on April 30, 2017. Where a tenant is in a fixed term tenancy agreement, such as in this case, the tenant is obligated to fulfill his obligation to pay rent in the agreed upon amount for the duration of the fixed term.

As provided under section 7 of the Act, if a party breaches the tenancy agreement the other party may pursue the party that breached for the losses associated to the breach, provided reasonable measures were taken to mitigate losses. Accordingly, where a

tenant ends the tenancy earlier than the fixed term expiry date, the landlord may pursue the tenant for loss of rent for the remainder of the fixed term, provided the landlord took reasonable measures to mitigate losses.

I am satisfied by the unopposed evidence before me, including oral submissions and testimony of the landlord, that the tenant breached the fixed term agreement by ending the tenancy early and the landlord suffered loss of rent for the months of January 2017 through March 2017 despite efforts to advertise and show the unit to prospective tenants. Therefore, I grant the landlord's request to recover loss of rent from the tenant for the months of January 2017 and February 2017.

I further award the landlord recovery of the \$100.00 filing fee paid for this application.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord in this decision, and I provide the landlord a Monetary Order for the balance remaining of \$2,155.00 [calculated as: \$1,370.00 + \$1,370.00 + \$100.00 - \$685.00] to serve and enforce upon the tenant.

### Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$2,155.00 to serve and enforce upon the tenant.

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: December 13, 2017

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Residential Tenancy Branch