



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, FF

### Introduction

This hearing dealt with the landlord's application for a Monetary Order for unpaid and/or loss of rent; and, authorization to retain the tenants' security deposit and pet damage deposit. The landlord and the male tenant appeared at the hearing. The parties confirmed that the landlord had served a hearing package upon both tenants in person at their residence on or about July 30, 2017. The tenant stated he was representing both himself and his wife, the other named tenant.

Shortly after the hearing commenced I informed the landlord that I had not receive any documentary evidence for this proceeding. The landlord stated that he provided a copy of a six point summary of events and a copy of the parties' tenancy agreement to the Residential Tenancy Branch by way of fax on or about July 30, 2017. The landlord acknowledged that he did not have a fax confirmation sheet to prove he submitted these documents to the Residential Tenancy Branch. I appreciate that documents may be misfiled from time to time and I turned to the tenant to determine which documents were served upon the tenants. The tenant acknowledged receipt of six point summary of events and I permitted the landlord to read it into evidence. The landlord acknowledged that he did not serve the tenants with a copy of the tenancy agreement with the hearing package. Since the tenants were not served with a copy of the tenancy agreement with the hearing documents I obtained the tenancy related information from the parties by way of oral testimony. There was no dispute as to the terms of tenancy.

During the hearing, the landlord stated that he had also submitted a Monetary Order worksheet to include a claim for rent differential of \$100.00 per month from March 2017 to the end of the fixed term. I did not have the Monetary Order worksheet either; however, I found its absence to be inconsequential. The landlord had clearly set out his claim on the Application for Dispute Resolution, including the details of dispute. The landlord had claimed \$4,200.00 on the Application for Dispute Resolution and described

this as being \$1,400.00 per month for three months in the details of dispute. I informed the landlord that a Monetary Order worksheet may be used to provide a detailed calculation of the amount appearing on the Application for Dispute Resolution; however, a Monetary Order worksheet is not a means to amend or increase a claim. Increasing or amending a claim is done by submitting to the Residential Tenancy Branch and serving the other party with an Amendment to an Application for Dispute Resolution to clearly put the other party on notice that the amount claimed has changed/increased. Since the landlord's claim of \$4,200.00 was clearly set out, and no Amendment was served, I informed the parties that I was considering the landlord's claim for compensation of \$4,200.00 only. The landlord indicated he understood.

#### Issue(s) to be Decided

1. Has the landlord proven an entitlement to recover loss of rent for three months from the tenants?
2. Is the landlord authorized to retain the tenants' security deposit and/or pet damage deposit?

#### Background and Evidence

The parties were in agreement as to the following terms of tenancy. The parties executed a written tenancy agreement for a tenancy set to begin on September 1, 2016 for a fixed term of 12 months. The rent was set at \$1,400.00 payable on the first day of every month. The tenants paid a security deposit of \$700.00 and a pet damage deposit of \$700.00.

It was undisputed that rent for November 2016 was paid and on or about November 1, 2016 the tenant telephoned the landlord to inform him that they would be vacating the rental unit by the end of November 2016 as the tenants would no longer be able to afford to pay rent for the unit. The landlord responded by telling the tenant to not do anything too quickly and that they could try to work something out after the landlord got back to town in about two weeks. The tenant sent a text message to the landlord to inform the landlord that the tenants could not afford to pay rent for the unit due to loss of employment and would have to move to something more affordable. On November 25, 2016 the tenant contacted the landlord to inform him that they had moved out. The parties met to do the move-out inspection.

According to the landlord the tenant enquired about the security deposit and the pet damage deposit and the landlord told the tenant that they were responsible for paying

rent until the landlord could find a replacement tenant. According to the tenant the tenant authorized the landlord to retain the security deposit and pet damage deposit orally in recognition that the tenant did not give at least one full month of advance notice.

The landlord stated that he started advertising the rental unit on-line when the tenants moved out on November 25, 2016. The landlord stated there was not a lot of rental activity during the winter and in February 2017 he secured a new tenant for a tenancy set to commence March 1, 2017 for rent of \$1,300.00 per month. By way of this application, the landlord seeks to recover loss of rent of \$1,400.00 for the months of December 2016; January 2017 and February 2017.

The tenant testified that when the tenancy formed the tenant was reluctant to enter into a fixed term but the landlord orally assured him that if the tenant needed to end the tenancy early all they had to do was give the landlord one month of notice. The landlord denied saying this to the tenant. The landlord recalled that the tenant was concerned about affording the monthly rent but the tenants were hoping to occupy the rental unit for a long term.

The tenant pointed out that he gave as much notice as he could once he found out he lost his job. The tenant wanted to bring the tenancy to an orderly end and ensure the landlord could re-rent the unit by giving as much notice as he could; paying the rent for their last month; and, then moving out before the end of the month rather than just continue to occupy the rental unit and not pay rent.

The tenant acknowledged that he did not give the landlord written authorization to retain the deposits but that he was agreeable to the landlord retaining them in recognition that the tenants breached the tenancy agreement and gave a little less than a month's notice to the landlord.

### Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

As the applicant, the landlord bears the burden of prove all of the above.

In this case, it is undisputed that the parties had a fixed term tenancy agreement and the tenants ended the tenancy early. Accordingly, I am satisfied that there was a breach of the tenancy agreement by the tenants.

Although it is clear the tenants breached the tenancy agreement, I find the landlord provided very little supporting evidence to demonstrate the losses suffered and efforts to mitigate losses. I find it reasonable to expect that where a landlord seeks recovery of several months of loss of rent, as in this case, the landlord would provide documentary evidence to show the advertising efforts made and proof as to when the subsequent tenancy started, such as the tenancy agreement for the new tenant(s). While I appreciate the landlord stated he did provide the tenancy agreement for the new tenant(s) to avoid breaching the privacy of the new tenant(s), the landlord still has a burden to substantiate his claims and could have either redacted personal information or provided other documentation such proof of payment of the security deposit and first month's rent from the new tenants.

Also of consideration is that the tenant notified the landlord of the impending breach of the tenancy agreement on or about November 1, 2016. Rather than put the tenant on notice that he would hold the tenants responsible for loss of rent and start advertising the rental unit shortly after November 1, 2016 the landlord responded to the tenant with a vague response to not do anything too quickly and vague reference to working something out; and, the landlord did not start advertising until much later. I find the reasonableness of the landlord's efforts to mitigate losses to be questionable.

In light of all of the above, I find the landlord did not provide sufficient evidence to support his claim for loss of rent for three months and demonstrate reasonable efforts to mitigate losses were undertaken. Therefore, I limit the landlord's award to the equivalent to one month of rent since the tenant was agreeable to compensating the landlord this amount at the move-out inspection and during the hearing.

Based on the above, I award the landlord compensation of \$1,400.00 and I authorize the landlord to retain the tenants' security deposit and pet damage deposit in satisfaction of this award. The balance of the landlord's claim is dismissed, without leave to reapply, due to insufficient evidence.

### Conclusion

The landlord is awarded compensation of \$1,400.00. The landlord is authorized the tenant's security deposit and pet damage deposit in full satisfaction of this award. The balance of the landlord's claim is dismissed without leave due to insufficient evidence.

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: January 26, 2018

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Residential Tenancy Branch