



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with a landlord's application for a Monetary Order for recovery of damages or loss under the Act, regulations or tenancy agreement filed on October 24, 2017. The landlord appeared at the hearing; however, there was no appearance on part of the tenant.

Since the tenant did not appear, I explored service of the hearing documents upon the tenant. The landlord testified that the hearing documents and evidence were sent to the tenant via registered mail at her residence on October 26, 2017 and the registered mail was delivered on October 27, 2017. The landlord orally provided the registered mail tracking number and a search of the tracking number confirmed the landlord's testimony. I was satisfied the tenant was duly served with notification of this proceeding and I continued to hear from the landlord without the tenant present.

The landlord pointed out that he has made two previous applications against the tenant: an Application for Dispute Resolution under the Direct Request Procedure on March 10, 2017 with respect to unpaid rent for March 2017 and a monetary claim made on April 10, 2017 that included claims for April 2017 rent; utilities; repairs and cleaning that was heard on September 6, 2017 (file numbers reference on the cover page of this decision). The claim before me consists of a claim for loss of rent for May 2017 and bailiff costs invoiced on April 24, 2017. I asked the landlord why he did not amend the April 10, 2017 application to include the claims before me and he explained he was unaware he could have done so. I have proceeded to consider the claims made under this application as they have not been heard before and they were incurred after the previous application was filed. I accepted the landlord's explanation as reasonable and I was satisfied that there was not an attempt by the landlord to divide the claims.

### Issue(s) to be Decided

1. Has the landlord established an entitlement to recover bailiff costs from the tenant?

2. Has the landlord established an entitlement to recover loss of rent for the month of May 2017 from the tenant?

Background and Evidence

The two year fixed term tenancy started on December 20, 2016 and was set to expire on December 31, 2018. The tenant was required to pay rent of \$2,200.00 on the first day of every month.

The tenant failed to pay rent for March 2017 and on March 21, 2017 an Adjudicator issued an Order of Possession and a Monetary Order for unpaid rent for March 2017 under the Direct Request procedure. The landlord testified that the tenant's boyfriend subsequently satisfied the unpaid rent for March 2017.

The landlord was awarded compensation for unpaid or loss of rent for April 2017; utilities and a late fee under the immediately preceding Application for Dispute Resolution filed on April 10, 2017. The landlord was also authorized by the Arbitrator to retain the tenant's security deposit in partial satisfaction of the rent for April 2017.

The tenant did not move out pursuant to the Order of Possession issued on March 21, 2017 and the landlord enforced the Order of Possession by obtaining a Writ of Possession and enlisting the services of the Court Bailiff. The bailiff removed the tenant from the rental unit on April 19, 2017. The bailiff services cost the landlord \$2,366.00 which he seeks to recover from the tenant by way of this application. The landlord provided a copy of the bailiff's invoice dated April 24, 2017 as evidence.

The landlord testified that the rental unit was left in a mess and the landlord had to clean it up over approximately 10 days before advertising the unit for rent. On May 1, 2017 the landlord advertised the unit for rent and secured replacement tenants for a tenancy that started on June 4, 2017 for the monthly rent of \$2,500.00. The replacement tenants entered into a fixed term set to expire on June 3, 2018 and then continue on a month to month basis thereafter. The landlord testified that the replacement tenants still remain in the rental unit; that no notice to end tenancy has been issued to them or by them; and, they continue to pay rent of \$2,500.00 per month. The landlord seeks to recover loss of rent for May 2017 from the tenant in the amount of \$2,200.00. The landlord provided a copy of the subject tenancy agreement on the tenancy agreement for the replacement tenancy as evidence.

Analysis

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

Where an Order of Possession is issued against a tenant by a delegated authority of the Director of the Residential Tenancy Branch, the tenant is required to comply with the Order. If the tenant does not comply with an Order of Possession the landlord must seek a court order (Writ of Possession) so as to regain possession of the rental unit and the Writ of Possession may only be executed by a court bailiff. In this case, an Order of Possession was issued against the tenant; the tenant did not comply with the Order of Possession; and due to the tenant's refusal to comply the landlord incurred additional costs to enlist the services of the court bailiff to execute the Writ of Possession. Accordingly, I find the tenant's actions, or lack thereof, resulted in the landlord suffering further losses and I award the landlord recovery of the bailiff costs from the tenant. Therefore, I grant the landlord's request for compensation in the amount of \$2,366.00.

Where a tenant breaches a fixed term tenancy agreement by causing the tenancy to end before the expiry date, the landlord may seek recovery of loss of rent from the tenant for the remainder of the fixed term, provided the landlord takes every reasonable step to mitigate losses. In this case, I accept the evidence before me that the rental unit remained vacant until the replacement tenants took possession of the rental unit on June 4, 2017; however, I find the landlord did not suffer a loss in rent equivalent to \$2,200.00 for the month of May 2017. I make this finding considering the following:

The landlord re-rented the unit for \$2,500.00 per month, an increase of \$300.00 per month over the rent payable by the tenant. Had the tenant fulfilled her tenancy agreement the tenant would have paid rent of \$41,800.00 for the period of May 2017 through December 2018 [\$2,200.00 x 19 months]. The replacement tenants will pay rent of \$45,000.00 for the period of June 2017 through December 2018 [\$2,500 x 18 months]. Accordingly, I find the landlord has and will likely receive more rent from the replacement tenants than he would have received from the tenant and I am unsatisfied he has suffered any further loss of rent as a result of the tenant's actions. My finding is consistent with Residential Tenancy Policy Guideline 3: *Claims for Rent and Damages for Loss of Rent* which provides, in part, on page 3:

*In a fixed term tenancy, if a landlord is successful in re-renting the premises for a higher rent and as a result receives more rent over the remaining term than would otherwise have been received, the increased amount of rent is set off*

*against any other amounts owing to the landlord for unpaid rent or damages, but any remainder is not recoverable by the tenant.*

In light of the above, I find the landlord has not established that the early end of the subject tenancy has caused the landlord to suffer further loss of rent than that he has already been awarded. Therefore, I deny the landlord's claim for loss of rent.

Since the landlord's application did have merit, I further do award the landlord recovery of the \$100.00 filing fee paid for this Application for Dispute Resolution.

In keeping with all of the above, I provide the landlord with a Monetary Order in the sum of \$2,466.00 [\$2,366.00 + \$100.00] to serve and enforce upon the tenant.

Since this is the third Application for Dispute Resolution filed by the landlord against this tenant that included monetary claims with respect to the same tenancy and this Application for Dispute Resolution was filed several months after the tenancy ended I find the landlord is precluded from filing any more Applications for Dispute Resolution against the tenant. Any further Applications for Dispute Resolution will likely be seen as an attempt to divide the claim which is not permitted under Rule 2.9 of the Rules of Procedure.

#### Conclusion

The landlord has been provided a Monetary Order in the amount of \$2,466.00 to recover the court bailiff costs from the tenant. The balance of the landlord's monetary claim has been dismissed without leave to reapply.

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: May 25, 2018

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Residential Tenancy Branch