



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL MNRL

### Introduction

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

- a Monetary Order pursuant to section 67 of the *Act*.

Both tenants and the landlord's agent, P.C. attended the hearing. All parties present were given a full opportunity to be heard, to present sworn testimony and to make submissions.

### Preliminary Issue – Landlord's Agent

Following opening remarks, the tenants argued that P.C. the landlord's agent should not be granted standing to bring an application. The tenants argued that P.C. was not the true landlord and had no controlling interest in the property. Rule 6.7 of the *Residential Tenancy Rules of Procedure* states as follows, "a party to a dispute resolution hearing may be represented by an agent." I accept P.C. submissions that they are the landlord's agent and I find he has proper standing to bring an action against the tenants.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award?

### Background and Evidence

Testimony provided to the hearing by the landlord's agent P.C. (the "landlord") explained that this tenancy began on January 1, 2016 and ended on March 1, 2017 with rent being set at \$2,700.00 per month. This was a fixed-term tenancy set to expire in June 2018.

The landlord is seeking a monetary award of \$7,900.00. The landlord stated that this was the amount remaining in unpaid rent for January 2017 (\$700.00), February 2017

(\$2,700.00), March 2017 (\$2,700.00) and from April 10 to 30, 2017 (\$1,800.00). Following the tenants departure from the rental unit on March 1, 2017, new occupants took possession of the rental unit on May 1, 2017. The landlord said he was seeking these funds because the tenants had broken a fixed-term tenancy and he had incurred a loss as a result of the tenants' prematurely breaking their lease. The landlord said that he placed advertisements on Chinese language websites and on Craigslist. The landlord could not recall what dates they were placed other than to state they were posted in "early march" and subject to free renewal.

The tenants disputed that any amount remained outstanding and argued the landlord's application was frivolous. The tenants alleged the landlord was trying to "get even" with them after they were award \$2,750.00 following an August 2017 arbitration before the *Residential Tenancy Branch*.

### 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. In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award.

The landlord provided testimony and limited written submissions arguing some rent remained unpaid for January through April 2017. The landlord provided testimony which was disputed by the tenants, along with a ledger that purported to show rent which remained due under the tenancy. After considering the landlord's testimony and having reviewed the evidence submitted, I find insufficient evidence was provided to the hearing demonstrating that any money remained outstanding for rent or that a loss was suffered due to a broken fixed-term tenancy. The "ledgers" provided as part of the landlord's evidentiary package are crudely drafted word documents, no rental receipts for past rents were provided and no bank ledgers or other documents were provided by the landlord to show that money remained outstanding.

Section 7 of the *Act* explains, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for

damage or loss that results... A landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss."

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, "Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect."

The landlord did not sufficiently show that payments had ceased and I find it difficult to reconcile why no notices to end tenancy or warning letters related to unpaid rent were ever served to the tenants. In addition, the landlord provided no documentary evidence showing the advertisements which he allegedly placed online, or did the landlord recall the date on which these advertisements were posted. I find that the landlord failed to take *reasonable efforts* to re-resent the suite. For these reasons, I dismiss this portion of the landlord's application for a monetary award.

### Conclusion

The landlord's application for a monetary award is 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: July 31, 2018

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Residential Tenancy Branch