



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes: MNR MNDC MNSD FF

### **Introduction:**

Both parties attended the hearing and gave sworn or affirmed testimony. The tenant agreed the Application for Dispute Resolution was served by registered mail. I find that the tenant was legally served with the documents according to sections 88 and 89 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* for orders as follows:

- a) A monetary order pursuant to Sections 7, 44, 45 and 67 for rental loss due to the breach of a fixed term lease;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

### **Issue(s) to be Decided:**

The tenant had a fixed term lease expiring July 31, 2018. The tenant vacated before the end of the fixed term. Is the landlord now entitled to a Monetary Order for rental loss and filing fee?

### **Background and Evidence:**

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced August 1, 2017 on a fixed term lease expiring July 31, 2018, a security deposit of \$772.50 was paid and rent is currently \$1545 a month. It is undisputed that the tenant vacated on December 31, 2017 and the unit was not re-rented until April 1, 2018. The landlord is claiming two months rent \$3090 and said they are waiving the third month owing. They claim liquidated damages of \$772.50 which they said is based on costs of re-renting including numerous showings, advertisements, checking on applicants and agent leasing fees. They said this rental took longer as it was the winter months and a ground floor unit which is less desirable to some prospects.

The tenant said she had unfortunate circumstances as she was pregnant and her boyfriend left so she was unable to afford the unit and had to break the lease. She verbally told a manager earlier and provided written notice in November 2017 but the landlord was unable to tell her what the costs would be at that time. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

### **Analysis**

Monetary Order

Section 45 of the Act provides how a tenancy ends. Section 45(2) states a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not **earlier than the date specified in the tenancy agreement as the end of the tenancy.**

Therefore, I find the tenant was responsible for the rent until the end of her tenancy or until the landlord re-rented the property.

I find the evidence is the landlord could not rent the property until April 1, 2018 but they are requesting only compensation for two months, that is January and February 2018. I find them entitled to \$3090 for rent for these two months. I find them also entitled to \$772.50 in liquidated damages as stated in their lease which I find was a genuine pre-estimate of their costs of re-renting as explained in the hearing.

It is unfortunate that the tenant has suffered such circumstances but I find her legally responsible for the costs claimed for the reasons stated above.

**Conclusion:**

I find the landlord is entitled to a monetary order as calculated below. I find the landlord is entitled to retain the security deposit to offset the rental amount owing and to recover filing fees paid for this application.

Calculation of Monetary Award:

Rental loss Jan.& Feb. 2018	3090.00
Liquidated damages	772.50
Filing fee	100.00
Less security deposit	-772.50
<b>Total Monetary Order to Landlord</b>	<b>3190.00</b>

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: August 17, 2018

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Residential Tenancy Branch