



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ORCA REALTY INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR-S, FF

### Introduction

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

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the landlord served the tenants with the notice of hearing package in person on February 14, 2019. Both parties also confirmed the landlord served the tenants with all of the submitted documentary evidence twice, the first via Canada Post Registered Mail on May 13, 2019 and again on the same day in person. Both parties confirmed that the tenants served the landlord with the notice of hearing package in person on May 13, 2019. Neither party raised any service issues. As both parties have attended and confirmed receipt of the notice of hearing package and the submitted documentary evidence of the other party, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

### Preliminary Issue(s)

At the outset, the landlord's monetary claim was clarified in which the order is for loss of rental income and not unpaid rent as the tenant abandoned the rental unit on December 31, 2018 prior to the end of the fixed term tenancy on March 31, 2019.

At the end of the hearing the tenants indicated that they have relocated since February 2019 and are no longer at the listed address provided by the landlord. The tenants provided a new mailing address. As such, the tenants' mailing address shall be amended to reflect the new address.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent/loss of rental income and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on April 1, 2018 on a fixed term tenancy ending on March 31, 2019 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated March 14, 2018. The monthly rent was \$3,850.00 payable on the 1<sup>st</sup> day of each month. Both parties confirmed a security deposit of \$1,925.00 and a pet damage deposit of \$1,950.00 were paid.

The landlord seeks a monetary claim of \$11,650.00 which consists of:

\$11,550.00	Loss of Rental Income, 3 months @ \$3,850.00
\$100.00	Filing Fee

Both parties confirmed the tenants provided notice to end the tenancy on November 23, 2018 in writing for December 31, 2018.

The landlord claims that the tenants breached their fixed term tenancy by pre-maturely ending it on December 31, 2018 by abandoning it. The landlord claims that upon being notified on November 23, 2018, the landlord advertised the rental unit for immediate occupancy. The landlord provided undisputed testimony that 20 inquiries were received for which 16 showings were done. The landlord stated that the rental unit was not successfully re-rented for the period ending on March 31, 2019. As such, the landlord seeks recovery of loss of rental income based upon the fixed term tenancy.

The tenants disputed the landlord's claim stating that the tenancy ended due to the "health of their family". The tenants stated during the hearing that they had vacated the rental unit prior to giving notice to end the tenancy to the landlord.

During the hearing both parties confirmed that negotiations were made to resolve the issues, but that no agreement was made.

### 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.

I accept the undisputed testimony of both parties and find that the tenants provided notice to end the tenancy on November 23, 2018 for December 31, 2018. The tenants vacated the rental unit ending the tenancy pre-maturely before March 31, 2019 as per the fixed term tenancy.

The amount sought by the landlord is \$11,550.00 for loss of rental income for 3 months at \$3,850.00 per month for the period after the tenants ended the tenancy from January 1, 2018 to March 31, 2019.

Residential Tenancy Branch Policy Guideline #3, Claims for Rent and Damages for Loss of Rent states in part,

**This guideline deals with situations where a landlord seeks to hold a tenant liable for loss of rent after the end of a tenancy agreement.**

Section 44 of the *Residential Tenancy Act* and section 37 of the *Manufactured Home Park Tenancy Act* set out when a tenancy agreement will end...

**Where a tenant has fundamentally breached the tenancy agreement or abandoned the premises, the landlord has two options.** These are:

1. Accept the end of the tenancy with the right to sue for unpaid rent to the date of abandonment;

2. Accept the abandonment or end the tenancy, with notice to the tenant of an intention to claim damages for loss of rent for the remainder of the term of the tenancy.

These principles apply to residential tenancies and to cases where the landlord has elected to end a tenancy as a result of fundamental breaches by the tenant of the *Act* or tenancy agreement. Whether or not the breach is fundamental depends on the circumstances but as a general rule non-payment of rent is considered to be a fundamental breach.

If the landlord elects to end the tenancy and sue the tenant for loss of rent over the balance of the term of the tenancy, the tenant must be put on notice that the landlord intends to make such a claim. Ideally this should be done at the time the notice to end the tenancy agreement is given to the tenant. The filing of a claim for damages for loss of rent and service of the claim upon the tenant *while the tenant remains in possession of the premises* is sufficient notice. Filing of a claim and service upon the tenant after the tenant has vacated may or may not be found to be sufficient notice, depending on the circumstances. Factors which the arbitrator may consider include, but are not limited to, the length of time since the end of the tenancy, whether or not the tenant's whereabouts was known to the landlord and whether there had been any prejudice to the tenant as a result of the passage of time. The landlord may also put the tenant on notice of the intent to make a claim of that nature by way of a term in the tenancy agreement. **However, where a tenant has abandoned the premises and the tenancy has ended with the abandonment, notice must only be given within a reasonable time after the landlord becomes aware of the abandonment and is in a position to serve the tenant with the notice or claim for damages.**

**The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement.** As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy...

**In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent.** Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale...

Even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

The landlord provided undisputed testimony that upon being notified the landlord advertised the unit immediately. The landlord stated that after 20 inquiries and 16

showings the unit remained un-rented until March 31, 2019. On this basis, I find that the landlord made reasonable efforts to mitigate any possible losses. As such, I find that the landlord has established a claim for loss of rental income for \$11,550.00.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

I authorize the landlord to retain the \$1,925.00 security deposit and the \$1,925.00 pet damage deposits in partial satisfaction of these claims.

### Conclusion

The landlord is granted a monetary order for \$7,800.00.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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 28, 2019

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Residential Tenancy Branch