



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNR, MNSD, FF

### **Introduction**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover a loss of income, for the cost of carpet cleaning, refilling a propane tank and for the filing fee.

Both parties attended this hearing and were given full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The parties represented themselves. As both parties were in attendance I confirmed service of documents. The parties confirmed receipt each other's evidence. I find that the parties were served with the landlord's materials in accordance with s.88 and s.89 of the *Act*.

The landlord's total claim was entered electronically as \$2,200.00 which represents the loss of income that he is claiming. However in his written application, the landlord had also claimed \$485.00 for the costs of refilling a propane tank and carpet cleaning. The evidence to support this portion of the landlord's claim was not before me and the landlord agreed that he had not served the tenant with evidence to support this claim. The tenant denied owing the landlord for the cost of propane and stated that he had hired a cleaner recommended by the landlord to clean the rental unit at the end of tenancy. Since the tenant was not served with evidence to support this portion of his claim, I dismiss this portion of the landlord's claim with leave to reapply.

Accordingly this hearing only dealt with the landlord's application for a monetary order for loss of income for March 2019 and for the filing fee. The landlord will deal with the return of all or a portion of the security deposit by returning it to the tenant or retaining a portion with the tenant's consent or making application for dispute resolution.

### **Issues to be decided**

Is the landlord entitled to a monetary order to recover loss of income and the filing fee?

### **Background and Evidence**

The parties agreed that the tenancy started on October 03, 2018 for a fixed term of six months ending March 01, 2019. At the end of the fixed term the tenancy would continue on a month to month basis. The monthly rent was \$2,200.00 due on the first of each month. Prior to moving in the tenant paid a security deposit of \$1,200.00.

The parties agreed that during the first week of February 2019, the landlord contacted the tenant by telephone and asked about his plans for the end of tenancy. The tenant stated that he intended to move out on March 31, 2019. The parties agreed that sometime after this telephone conversation, the landlord called back and informed the tenant that she intended to put the home up for sale.

The landlord stated that she listed the home for sale on February 22, 2019 and had multiple showings on February 23, 2019. An offer was accepted later that day. The tenant stated that the listing showed the rental unit as vacant and the landlord and listing agent requested him to provide them with a written notice to end tenancy. The tenant stated that since he was moving out on March 31, 2019, he was required to provide notice prior to March 01, 2019 and he intended to do so on February 28, 2019.

The tenant stated that the landlord and realtor made multiple calls requesting the written notice and finally on February 24, 2019, the tenant gave written notice to end the tenancy effective February 28, 2019.

The landlord is claiming loss of income for the month of March 2019 in the amount of \$2,200.00

### **Analysis**

Section 45 of the *Residential Tenancy Act*, states that 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 one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month that rent is payable under the tenancy agreement.

Based on the sworn testimony of both parties, I find that the tenant intended to move out on March 31, 2019 and provided the landlord with verbal notice in the first week of February 2019. On February 22, 2019, the landlord listed the home for sale and an offer was accepted on February 23, 2019.

The landlord did indicate that the offer fell through, but another buyer was found, and the home sold in April 2019. Due to the sequence of these events the tenant decided to

move out on February 28, 2019 and written notice to end tenancy on February 24, 2019 with an effective date of February 28, 2019.

Even though the circumstances of this case are unusual, and the tenant changed his move out date after the home was listed for sale, the tenant ended up not providing 30 days' notice to end the tenancy. By ending the tenancy without adequate notice, the tenant breached the tenancy agreement. The landlord is claiming a loss of income that resulted from this breach.

Section 7 of the *Residential Tenancy Act* states that a landlord who claims compensation for loss that results from the tenant's non-compliance with the *Act* or their tenancy agreement must do whatever is reasonable to minimize the loss.

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. In this case, in order to minimize the loss, the landlord had to make efforts to re-rent the unit. However, the landlord testified that on February 22, 2018, he listed the rental unit for sale. Therefore I find that the rental unit was unavailable for rent during the month of March

Pursuant to *Residential Tenancy Policy Guideline #3*, placing the property on the market for sale will not constitute mitigation. Accordingly, I find that the landlord is not entitled to loss of income for the month of March. Since the landlord has not proven his case he must bear the cost of filing his application.

### **Conclusion**

The landlord's application is dismissed.

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 13, 2019

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Residential Tenancy Branch