



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC MNSD MNR FF

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on June 28, 2019. The Landlord applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord attended the hearing. The Tenant did not attend the hearing. The Landlord stated that she sent the Tenant a copy of the Notice of Hearing and evidence by registered mail on March 18, 2019. The Landlord sent this evidence to the Tenant before they moved out (end of March). Pursuant to section 88 and 90 of the Act, I find the Tenant is deemed to have received these documents on March 23, 2019, the fifth day after their mailing.

The Landlord also submitted more documentation to our office a couple of weeks before the hearing. However, she did not serve this evidence to the Tenant because she does not know where he lives. As discussed during the hearing, I will not consider this second evidence package, as it has not been sufficiently served on the respondent.

The Landlord stated that she already returned the Tenant's security deposit, as such, she does not wish to claim against it, as she initially indicated. I have amended her application accordingly. Further, the Landlord wished to have additional time to further build her claim regarding the additional costs to re-rent the unit, and for utilities. As such, she withdrew this portion of her application, and the Landlord is only seeking to recover the lost rent in this hearing. I hereby allow the Landlord to withdraw this portion of her application, and she is granted leave to reapply for this portion, once she obtains the necessary documentation and bills to support it.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issues to be Decided

- Is the Landlord entitled to a monetary order for rent or for damage or loss under the Act?
- Is the Landlord entitled to recover the cost of the filing fee?

#### Background and Evidence

The Landlord stated that the Tenant signed a fixed term tenancy agreement starting on August 30, 2018, and ending on July 30, 2019. The Landlord provided a copy of the tenancy agreement which specifies that monthly rent is \$3,725.00. The Landlord testified that she has already returned the security deposit.

The Landlord stated that the Tenant gave an unofficial notice that he would be vacating the rental unit sometime in early January 2019. The Landlord stated that she immediately started posting ads on a variety of sites to try and find a replacement tenant. The Landlord stated that she got official written notice from the Tenant on February 28, 2019. The Tenant moved out on March 30, 2019, which is 4 months before the end of the fixed term tenancy agreement he signed.

The Landlord stated that she listed the rental property on 4 different sites (Craigslist, Kijiji, Rentsline and Sabbatical Homes. The Landlord also stated that she posted the ad in the hospital for employees to see. The Landlord explained that she had around 36 different people interested in the property but nothing has materialized. The Landlord started with showings in January 2019, and each party had a slightly different set of circumstances which made the unit unsuitable. The Landlord stated that at one of the most promising showings, a loud compressor came on next door for an extended period of time, which impacted their interest. Subsequently, there were lots of inquiries and interest, but many people wanted odd timelines, or to rent the property for periods that were incompatible with the availability of the unit.

The Landlord explained that many of the requests were incompatible with her requirements because she planned on moving back in during August of 2019. Because

of this, the Landlord explained that the unit was unavailable to rent beyond July 30, 2019. The Landlord stated that the Tenant left her with an awkward window of time to fill when he vacated at the end of March. The Landlord is seeking to recover lost rent for April, May, June, and July of 2019, because this is when the Tenant was supposed to stay until, as per his fixed term agreement.

The Landlord explained the various inquiries and explained the source of each lead (which site it came from) and also the dates they occurred, as well as the reason it was refused. The Landlord stated there were 2 leads in January, 13 in March, 7 in April, 11 in May, and 3 in June.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

I find the Tenant breached his fixed term tenancy agreement by vacating at the end of March 2019, rather than at the end of July 2019. Since the Landlord was planning on moving back into the rental unit in August of 2019, this left the Landlord with an awkward 4 month window of time to fill (April-July). I note the Landlord is seeking \$3,725.00 x 4 because she was unable to re-rent the unit.

I note the following relevant portions of the *Policy Guideline #5 – Duty to Minimize Loss*:

#### ***Claims for loss of rental income***

*In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent.*

I note that the Tenant was under a fixed term tenancy agreement until July 30, 2019, and was not in a position to legally end the tenancy without repercussion. I find the Tenant breached the *Act* and the tenancy agreement when he gave Notice and left

early. As such, I find the Landlord is entitled to compensation. However, I find the Landlord did not take sufficient steps to mitigate the loss. I note the Landlord provided no information as to whether or not she adjusted the amount of rent she was seeking in order to attract more interest. Further, I find the Landlord had very specific rental parameters (timelines), which clearly impacted her ability to re-rent the unit. Her own testimony indicates that many of the potential renters were unsuitable due to the timeline constraints of the Landlord. I find the Landlord contributed to difficulties in re-renting. Further, since the Landlord failed to explain whether or not she adjusted rent to attract sufficient interest in the rental unit, I am not satisfied she sufficiently mitigated her losses. As such, I decline to award the full amount of her claim. I find a more reasonable amount is 50% of the rent over the material time. I award the Landlord \$7,450.00 for rental losses.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was substantially successful with her application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

In summary, I find the Landlord is entitled to the following monetary order:

<b>Item</b>	<b>Amount</b>
Lost Rent	\$7,450.00
PLUS: Filing Fee	\$100.00
<b>Total Amount</b>	<b>\$7,550.00</b>

### Conclusion

The Landlord is granted a monetary order in the amount of **\$7,550.00**, as specified above. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: July 2, 2019

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Residential Tenancy Branch