



# 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 MNDC MNSD 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 August 8, 2019. The Landlord applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

The owner of the property and his agent attended the hearing (collectively referred to as the "Landlord"). The Tenants also attended the hearing. The Tenants confirmed receipt of the Landlord's application, evidence, and amendment. The Landlord confirmed receipt of the Tenant's evidence.

Both parties were 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 unpaid rent and utilities or for damage or loss under the Act?
- Is the Landlord entitled to retain all or a portion of the Tenants' security and pet deposit in partial satisfaction of the monetary order requested?
- Is the Landlord entitled to recover the cost of the filing fee?

## Background and Evidence

The Landlord stated that the Tenants signed a fixed term tenancy agreement starting on November 1, 2016, and ending May 31, 2018. The Landlord provided a copy of the original tenancy agreement, along with the two lease extension documents. In this initial agreement, the Landlord selected the box indicating that the tenancy would revert to a month-to-month tenancy at the end of the fixed term, in May of 2018. The Landlord stated that he made a mistake in selecting this box, and meant to select that the Tenants were required to vacate at the end of the term. The Tenants stated they were always under the impression that the tenancy would be month to month after the fixed term was up.

Prior to the end of the initial fixed term tenancy agreement, the parties signed a lease extension document, on March 5, 2018, where the parties agreed to a new lease spanning from June 1, 2018, until November 30, 2018. Also in this document is a term as follows:

**AFTER LEASE EXPIRES:**

( ☐ ) Tenancy will continue on a month to month basis

( ☒ ) Tenancy ends and the tenant must vacate at 1pm in the afternoon on the last day unless both parties agree to another term.

The Landlord also provided a second lease extension document, after the he realized he would be out of the country for a while longer. The parties all agreed, as per the second lease extension signed on October 26, 2018, that there would be another lease extension spanning from December 1, 2018, until July 31, 2019. Also, in this document is a term as follows:

**After Lease expires:**

( ☐ ) Tenancy will continue on a month to month basis

( ☒ ) Tenancy is ended and the tenant must vacate the rental unit due to the tenancy being a sublease or due to circumstances prescribed under section 13.1 of the Residential Tenancy Regulation. The reason the tenant must vacate is as follows:

\_\_\_\_\_  
Owner will be moving back into the house

All parties signed both of these lease extension documents.

The Tenants assert that since their initial tenancy agreement reverted to a month-to-month tenancy agreement at the end of the initial fixed term (May 31, 2018), that any extension of the lease they signed was also month-to-month, and that they would be

able to end the tenancy, with notice, prior to the end of each of the respective and subsequent terms. The Landlord asserts that, although the initial agreement indicated the tenancy would revert to a month-to-month, they all agreed, in writing on the two subsequent lease extension documents that it was a fixed term tenancy, and that the Tenants would have to move out at the date indicated. The Landlord stated that the date he was planning on moving back into the house got pushed back in each of the lease extensions because his work kept him overseas longer than anticipated. The Landlord stated it was always his plan to move back into the house when he returned and the Tenants knew this.

The Landlord is seeking monetary compensation because the Tenants broke their final lease extension (December 1, 2018, - July 31, 2019). The Landlord stated that the Tenants gave their notice that they would be moving out on March 15, 2019, by email, and they moved out on April 15 or 16<sup>th</sup>, 2019. The Tenants stated that they believed they only had to give 10 days' notice in situations where the Landlord was moving back into the property. The Tenants provided excerpts from section 49/50 of the Act.

The Landlord stated the Tenants failed to pay any rent for April 2019 despite living in there until mid-month. The Landlord is also seeking to recover lost rent for May, June, and July of 2019 because they were unable to re-rent the unit, and they feel the Tenants should be responsible for the rent up until the end of their fixed term lease extension.

Both parties agree that monthly rent was \$4,975.00, and was due on the first of the month. Both parties also agree that the Landlord still holds a security deposit of \$2,487.50 and a pet deposit of \$2,487.50.

The Landlord is seeking to recover rent, as specified above, for 4 months, totalling \$19,900.00. The Landlord stated that they mitigated their losses as follows: they initially posted the ad to re-rent the house on April 2, 2019, at a reduced rent amount of \$4,500.00. The Landlord stated that since it was a detached house in a high end neighbourhood, only available for a few months, it was difficult to re-rent. The Landlord stated that they reduced the rent again on April 25, 2019, to \$4,300.00. The Landlord further reduced the rent to \$4,000.00 on June 10, 2019. The Landlord stated that they only had 12 people interested, 8 of which were looking for long term rentals. 2 of the others wanted a furnished unit, and 2 just didn't want the house. The Tenants feel the Landlord should have furnished the unit if they wanted to re-rent it. The Landlord stated he moved back in at the start of August 2019, as planned, but he is looking to recoup the lost rent from April to the end of July 2019.

Also, the Landlord is seeking to recover unpaid utilities in the amount of \$879.04 for water, garbage, sewer and recycling. The Landlord stated that this bill came in after the Tenants moved out. The Tenants acknowledge that they owe this amount but stated that the amount was actually only \$833.49, as per the utility bill in evidence. The Tenants stated they confirmed with the city the \$833.49 was paid (discounted amount for early payment), not \$879.04. The Landlords did not directly speak to this issue or address the Tenant's statement that only the discounted amount was paid.

### 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.

First, I turn to the issue regarding whether or not the Tenants were under a fixed term tenancy agreement at the time they terminated the tenancy. I have considered that the original tenancy agreement was for a fixed term, ending on May 31, 2018. Although the Tenants have asserted that they were on a month-to-month tenancy after the initial term lapsed, I note the parties agreed in writing, that the tenancy would continue for a finite period of time via the two signed lease extension documents. The first one was signed on March 5, 2018, and the parties agreed to a new lease spanning from June 1, 2018, until November 30, 2018. Then, after the Landlord realized he wouldn't be returning to live at home as soon as he anticipated, the parties signed the second lease extension on October 26, 2018. This second extension laid out that there would be another lease extension spanning from December 1, 2018, until July 31, 2019. At the end of this term, the parties also agreed that the Tenants would move out so the Landlord could move in. I find the layout and setup of this lease extension agreement is clear in that the term was fixed, with a clear end date.

I find it important to note the following portion of the *Act*:

### **Changes to tenancy agreement**

**14** (2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

I find that, when the Tenants signed the lease extension agreements, they were in turn amending and changing the terms in the original agreement. I find the language and structure of the lease extension agreements sufficiently clear that both parties agreed the extensions were for fixed terms. The most recent fixed term ran from December 1, 2018, until July 31, 2019.

I find it important to note the following portion of the Act:

**Tenant's notice**

**45** (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find the Tenants were not legally entitled to give notice to end tenancy in the manner they did, and I find they breached section 45 of the Act when they gave notice prior to the end of the fixed term.

Further, the Landlord was under no obligation to issue a 2 month notice to end tenancy, and since one was never issued, the Tenants were not able to give 10 days' notice that they would be ending the tenancy, pursuant to section 50 of the Act. This section of the Act is only applicable when a Landlord issued a Notice under section 49 of the Act.

Next, I turn to the Landlord's overall request to recover lost rent for April through July 2019. First, I will address the portion of time the Tenants were living in the rental unit, at the end of the tenancy, but never paid the rent (part of April 2019). I note that the consistent evidence is that the Tenants did not pay any rent for the month of April 2019, and moved out mid-way through the month. I note that rent was due on the first of the month. I also note that the Tenants were not legally in a position to give notice in the

manner they did, and to vacate in the middle of the month as they did. I find they are responsible for April 2019 rent, in full.

Next, I turn to the Landlord's request to recover rent for May - July 2019 (3x \$4,975.00) when the unit sat empty as they attempted to re-rent it.

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 Tenants were under a fixed term tenancy agreement until the end of July 2019, and were not in a position to legally end the tenancy without repercussion. I find the Tenants breached the Act and the tenancy agreement when they gave Notice and left early. As such, I find the Landlord is entitled to compensation, given he was unable to re-rent the unit for the remainder of the fixed term, and suffered financial loss. However, I decline to award the full amount of this requested compensation. In making this determination, I note the Landlord took steps to re-rent the unit by reposting the ad, online, but I also note the Landlord received an email from the Tenants indicating they were leaving on March 15, 2019, yet didn't post the ad until April 2, 2019. It is not clear why the Landlord waiting 2 weeks to re-post the ad. Further, I note the Landlord reduced the rent a couple of times, but several weeks (nearly 6 weeks on one occasion) passed between some of the reductions. I find it likely that if some of the rent reductions were done in a more timely and responsive manner, it would have improved the chances of re-renting.

Furthermore, I note the Landlord was planning on moving back into the rental unit at the beginning of August, and based on the Landlord's own testimony on this matter, this was a large factor which dissuaded most of the prospective renters, as they were mostly looking for longer term rentals. I find the Landlord's plans to move back into the rental unit within a couple of months contributed significantly to his inability to re-rent the unit. I also find he did not sufficiently lower rent in a timely manner (considering the limited window they were seeking to fill). Ultimately, I find the Landlord only partially mitigated his losses.

Since I find the Landlord's plans to move back into the rental unit within a couple of months contributed significantly to his inability to re-rent the unit and that he failed to effectively mitigate his lost rent, I decline to award him the full amount of his claim for

May-July. I find a more reasonable amount is one full month's rent. This is in addition to the amount for April 2019. In summary, I grant the Landlord \$4,975.00 in compensation for April 2019, as specified above, and another \$4,975.00 as a partial award for the period of May-July 2019.

I note the Tenants do not dispute that they owe the utilities the Landlord is claiming. However, I note the Tenants stated they contacted the city and confirmed that only \$833.49 was paid by the Landlord in full satisfaction of all utilities for the material time (the discounted amount for paying early). The Landlord did not dispute that they paid early and received the discounted amount of \$833.49. As such, I award the Landlord \$833.49, for the utilities, rather than \$879.04.

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 his application, I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. Also, I authorize the Landlord to retain the security and pet deposit to offset the other money owed.

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

<b>Item</b>	<b>Amount</b>
Lost Rent (2 x \$4975.00)	\$9,950.00
Utilities	\$833.49
PLUS: Filing Fee	\$100.00
Subtotal:	\$10,883.49
LESS: Security and Pet Deposit	\$4,975.00
<b>Total Amount</b>	<b>\$5,908.49</b>

### Conclusion

The Landlord is granted a monetary order in the amount of **\$5,908.49**, as specified above. This order must be served on the Tenants. If the Tenants fail 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: August 9, 2019