



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BROWN BROS AGENCIES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      **FFL MNRL-S**

### Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The tenant MW attended for the tenants ("the tenants"). The agent and property manager HH attended for the landlord ("the landlord"). The tenants acknowledged receipt of the landlord's materials. No issues of service were raised. I find the landlord served the tenants in accordance with the *Act*.

### *Security Deposit*

The landlord acknowledged receipt of the security deposit in a previous Decision to which reference is made on the first page. As the issue of the security deposit has been previously addressed, the landlord's claim was dismissed in this regard without leave to reapply.

### Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

### 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 March 1, 2018 on a 1-year fixed term ending on April 30, 2019. A copy of the agreement dated February 1, 2018 was submitted as evidence. The monthly rent was \$2,750.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$1,375.00 and a pet damage deposit of \$250.00 were paid. The tenants vacated the unit on October 31, 2018 after providing one month's notice. The tenants explained they understood the landlord had made a promise to them at the time the unit was rented that the landlord would not offer it for sale; the tenants stated they had a family and wanted security of being able to remain in the unit. The landlord acknowledged advertising the property for sale but testified there was no such promise with the tenants.

In a previous Decision dated March 11, 2019, the landlord was granted a monetary order for unpaid rent to the date of vacancy and utilities with authorization to apply the security deposit to the monetary award for a final order for the remaining balance of \$2,406.98. As mentioned earlier, the Decision is referenced on the first page.

The landlord testified that as soon as the tenants submitted one month's notice of their intention to vacate on October 31, 2018, the landlord advertised the unit on the firm's website of the property manager as well as other commonly used websites and continued to do so until January 2, 2019. The landlord testified that on January 2, 2019, new occupants for the unit were located and a lease was signed effective February 22, 2019 for a reduced rental of \$2,650.00.

The landlord claims compensation for four months of lost rental (November 2018, December 2018, January 2019 and February 2019).

The landlord submitted testimony that the rent was reduced by \$25.00 on four occasions from November 1, 2019 until the unit was re-rented. The landlord submitted evidence of the number of viewers of the unit for each of the four vacant months as well as the final month of occupancy, October 2018.

The parties agreed the home was “lovely” and “well situated”; it was in a desirable neighbourhood. The unit was in good condition and clean when showed to prospective tenants both in the last month of the tenancy and in the subsequent months.

The landlord testified to doing everything possible to find replacement tenants for the unit. The landlord stated that all normal procedures to find tenants were followed. The landlord submitted as evidence copies of two online advertisements and a copy of an internal “grid” used by the property manager’s firm which provided each of the firm’s agents with information that the unit was available and the terms.

The tenants disagreed that the landlord had made genuine efforts to re-rent the unit. They stated that they searched the landlord’s web site on an unspecified date during the period the unit was vacant and could not find the unit advertised. The landlord testified that the unit was advertised on the firm’s website; however, no copy of the advertisement or screen shot was submitted.

The landlord stated she did not understand why the unit did not rent again quickly and why it was vacant for four months. The landlord did not provide an explanation for the failure of the unit to rent during the last month of the tenancy or the subsequent four months except to assume that prospective families were not willing to move during a school year or around seasonal holidays.

The tenants objected to paying four months rent for the time the unit was vacant and testified that if the landlord had made reasonable efforts, the unit would have been rented to replacement tenants right away. The tenants stated that the rent reductions were not enough, as evidenced by the low level of interest and the failure to find a replacement occupant.

The landlord claimed reimbursement of lost rent for the four months the unit was unoccupied as well as reimbursement of the filing fee.

## Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement.

Section 7(1) of the Act provided that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

The claimant must prove the existence of the damage or loss. Secondly, the claiming party must that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.

Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

In this case, the onus is on the landlord to prove the landlord is entitled a claim for a monetary award. In this case, the parties acknowledged that the unit was vacant for four months and the landlord lost rental income for this period. At issue is the landlord's efforts to mitigate the landlord's loss.

A tenant may not legally end a fixed term tenancy agreement except in a few limited and specific circumstances provided under the *Act*, which are cases where the landlord has violated a material term of a tenancy agreement; a tenant is fleeing domestic violence or going into a care home; or, as authorized by the Director. The tenants' reasons for ending the tenancy do not constitute a legal basis for ending the fixed term early and I find it is undeniable that the tenants breached their tenancy agreement by ending the tenancy early.

Where a tenant breaches their fixed term tenancy agreement, the tenant may be held

liable to compensate the landlord for loss of rent up to the end of the fixed term. Section 7 of the *Act* provides that where a landlord claims against a tenant for loss of rent the landlord has a burden to prove the landlord took made every reasonable effort to minimize losses.

Section 7 of the *Act* imposes an obligation on the landlord to do whatever is reasonable to minimize the damage or loss, stating in part:

***Liability for not complying with this Act or a tenancy agreement***

*7 (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do **whatever is reasonable to minimize the damage or loss.** (emphasis added)*

The primary focus in this claim is whether the landlord met its burden to mitigate loss of rent.

Residential Tenancy Policy Guideline 3: *Claims for Rent and Damages for Loss of Rent* provides information and policy statements with respect to claiming for loss of rent. The policy guideline states, in part, emphasis added:

*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.*

*In a fixed term tenancy, if a landlord is successful in re-renting the premises for a higher rent and as a result receives more rent over the remaining term than would otherwise have been received, the increased amount of rent is set off against any other amounts owing to the landlord for unpaid rent or damages, but any remainder is not recoverable by the tenant.*

In this case, it is noteworthy that the unit was not occupied again until the rent was reduced by \$100.00 by small increments over the period of the four-month vacancy.

The landlord acknowledged the landlord showed the unit unsuccessfully to prospective tenants in the last month of the tenants' occupancy. I find that the landlord should have

realized right away that the rental requested was too high and families were not willing to move into such a large home at that rental rate and at that time of the year.

I find that the reduction of the rent in such small increments to have been insufficient mitigation of damages. I find the landlord failed to reduce the rent in order to attract replacement occupants. I accordingly find that the landlord did not *mitigate the loss by re-renting the premises at a reasonably economic rent*, as required in the above Guideline.

I am not satisfied the landlord has met the burden of proof on a balance of probabilities that the landlord made reasonable efforts to mitigate losses as required under the *Act*.

I therefore dismiss the landlord's claims without leave to reapply.

As the landlord has not been successful in this action, I dismiss the landlord's claim for reimbursement of the filing fee.

### Conclusion

I dismiss the landlord's claims without leave to reapply.

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 29, 2019

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Residential Tenancy Branch