



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNDCL-S, FFL

### **Introduction**

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

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

Rule 7.3 of the Rules of Procedure provides as follows:

### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The landlord testified that he had personally served the tenant with his dispute resolution package and evidence at the tenant's workplace on March 14, 2020. In accordance with sections 88 and 89 of the Act, I find the tenant duly served with the landlord's dispute resolution package and evidentiary materials.

**Issue(s) to be Decided**

Is the landlord entitled to monetary compensation for unpaid rent and losses?

Is the landlord entitled to recover the filing fee for this application from the tenant?

**Background and Evidence**

This fixed term tenancy began on August 21, 2019 with monthly rent set at \$2,000.00. The landlord collected a security deposit in the amount of \$1,000.00, which they still hold. This was a fixed term tenancy which was to end on June 30, 2020. The landlord testified that on February 29, 2020 at 11:13 p.m., he received a text message from the tenant that he had moved out. The landlord testified that he had not received any prior written notice from the tenant that he would be moving out.

The landlord testified that he had attempted to re-rent the home as soon as possible by posting an advertisement online. The landlord provided a copy of the advertisement for rent. The landlord testified that despite lowering the monthly rent, he was unable to fill the vacancy for March or April 2020 despite actively looking for a tenant for these two months. The landlord testified that he was able to sell the home, with a possession date of May 1, 2020, and is seeking a monetary order for loss of rental income for March and April 2020.

**Analysis**

Section 44 of the *Residential Tenancy Act* reads in part as follows:

**44** (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...

*(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;*

(c) the landlord and tenant agree in writing to end the tenancy;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

**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.*

The landlord provided undisputed, sworn testimony that the tenant had moved out prior to the end of this fixed term tenancy, in a manner that does not comply with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenant obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. No applications for dispute resolution have been filed by the tenant in regards to this tenancy. The tenant moved out 4 months earlier than the date specified in the tenancy agreement.

The evidence is clear that the tenant did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenant vacated the rental unit contrary to Sections 44 and 45 of the *Act*. The evidence of the landlord is that he was only claiming the loss of rental income for March and April 2020 as he sold the home.

I am satisfied that the landlord had made an effort to mitigate the tenant's exposure to the landlord's monetary loss of rent for March and April 2020, as is required by section 7(2) of the *Act*. Accordingly, I find that the landlord is entitled to a monetary order in the amount of \$4,000.00 in satisfaction of the lost rental income due to the tenant's failure to comply with sections 44 and 45 of the *Act*.

I find that the landlord's Application has merit and that the landlord is entitled to recover the fee for filing this Application.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security in partial satisfaction of the monetary claim.

### **Conclusion**

I issue a Monetary Order in the amount of \$3,100.00 in the landlord's favour under the following terms which allows the landlord to retain the security deposit in partial satisfaction of the landlord's monetary claim:

<b>Item</b>	<b>Amount</b>
Monetary Claim for Lost Rental Income due to tenant's failure to comply with sections 44 and 45 of the <i>Act</i>	\$4,000.00
Filing Fee	100.00
Security Deposit	-1,000.00
<b>Total Monetary Order</b>	<b>\$3,100.00</b>

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this 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: July 10, 2020

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Residential Tenancy Branch