



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MNDC, MND, MNR, FF*

### **Introduction**

This hearing dealt with an application by the landlord pursuant to sections 67, and 72 of the *Residential Tenancy Act*. The landlord applied for a monetary order for loss of income, cost of cleaning and repairs and for the recover of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenants represented themselves. The landlord was accompanied by an interpreter.

As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

The landlord filed three sets of claims listed in three monetary order worksheets. It took 50 minutes into the hearing to deal with two of the three worksheets. The need for an interpreter further slowed the process. Some of the evidence to support the landlord's monetary claims listed in the third worksheet failed to upload to the system. The landlord's claim was lengthy. In the interest of giving both parties adequate time to discuss the landlord's claim, I informed the landlord that I would make a decision on worksheets #1 and #2 and dismiss the monetary claims on worksheet #3 with leave to reapply. The parties agreed.

Accordingly, this hearing dealt with the landlord's monetary claims as listed on worksheets #1 and #2.

### **Issues to be decided**

Is the landlord entitled to a monetary order and the filing fee?

### **Background and Evidence**

The background facts are generally undisputed. The tenancy started on August 15, 2019 for a fixed term of one year. The end date of the fixed term was August 14, 2020. The monthly rent was \$1,280.00 per month and was due on the 14th day of each month. Prior to moving in the tenants paid a security deposit of \$640.00.

A copy of the tenancy agreement was filed into evidence. The tenants named on the agreement are TH and JV. The tenants agreed that sometime in January 2020, they had a falling out and TH decided to move out of the rental unit. Since the tenants were in a fixed term agreement TH started looking for someone to take her place.

TH stated that she advertised the vacancy on a popular social network, but the landlord forced her to take the postings down. A copy of the communication between the landlord and TH was filed into evidence which supports TH's testimony that the landlord asked her to remove the posting. In the message to TH, the landlord informed TH that she should not be looking for a roommate for JV.

JV stated that she could not afford the full amount of rent and therefore also looked for a replacement tenant and found a suitable person LB. In her written submission TH stated that LB was a mutual friend of the tenants and was JV's co-worker. JV stated that she had a conversation with the landlord on speakerphone in the presence of JV's mother and the prospective replacement tenant LB. The landlord refused to accept LB as a roommate for JV, even though her parents were willing to co-sign for her.

JV stated that since the landlord was making it difficult for her to find a replacement tenant by withholding approval and since JV could not afford the rent on her own, she verbally informed the landlord on February 13, 2020 that she would be moving out on March 16, 2020. JV followed it up with a written notice to end tenancy on February 14, 2020.

The landlord stated that she started looking for a tenant on April 22, 2020 by advertising the vacancy at an increased rent of \$1,400.00 (tenants were paying \$1,280.00). The landlord testified that she had a good response to her advertisement with 20 expressions of interest. The landlord stated that she found them all unsuitable for various reasons and was not able to find a suitable tenant before June 15, 2020. The landlord is claiming the loss of income she incurred for the months of March, April and May 2020.

The landlord's monetary claim worksheet #1 is as follows:

1.	Printing evidence	\$386.14
2.	4 Airpak envelopes	\$5.34
3.	Registered mail	\$52.21
4.	Printer	\$46.47
5.	Ink for printer	\$47.03
6.	Ink for printer and paper	\$53.74
7.	Filing fee	\$100.00
	<b>Total</b>	<b>\$690.93</b>

The landlord's monetary claim #2 is as follows:

1.	Loss of income for March 15 – April 14, 2020	\$1,280.00
2.	Loss of income for April 15 – May 14, 2020	\$1,280.00
3.	Loss of income for May 15 – June 14, 2020	\$1,280.00
	<b>Total</b>	<b>\$3,840.00</b>

## **Analysis**

### **Monetary claim worksheet #1**

The legislation does not permit me to award any litigation related costs other than the filing fee. Therefore, the landlord's monetary claims #1 to #6 as listed on worksheet #1 are dismissed. Since the landlord has not proven her claim, she must bear the cost of filing her own application.

### **Monetary claim worksheet #2**

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, on February 12, 2020, the tenant gave the landlord verbal notice to end the tenancy and followed it up with written notice on February 16, 2020. The effective date of the end of tenancy was March 16, 2020.

Since rent is due on the 14<sup>th</sup> of each month and the end date of the fixed term is August 14, 2020, the tenant did not provide notice before the day rent was due and ended the tenancy prior to the end date of the fixed term. This resulted in a breach of the tenancy agreement. The landlord is claiming a loss of income that resulted from this breach.

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. This may include compensating the landlord for the difference between what she would have received from the defaulting tenant and what she was able to re-rent the premises for the balance of the un-expired term of the tenancy.

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.

Based on the testimony and documentary evidence of the landlord, I find that the landlord did not permit TH to find a replacement tenant and did not approve a tenant found by JV. JV testified that the landlord made it difficult for her find a tenant. This is supported by the landlord's submission in which she stated that was not able to find a suitable tenant from the 20 expressions of interest she received.

The landlord commenced her efforts to find a tenant by advertising the vacancy on April 22, 2020, which is approximately 9 weeks after she received the tenants' notice to end the tenancy. In addition, the landlord advertised a raised rent. The landlord stated that the unit remained vacant for the period of March 16 to June 16, 2020.

Even though I find that the tenant breached the tenancy agreement which resulted in a loss of income for the landlord, I further find that by placing a advertisement on April 22, 2020 and raising the rent, the landlord did not make reasonable efforts to mitigate her losses. The landlord could have mitigated her losses by allowing the tenants to find a replacement tenant, by advertising the vacancy as soon as she received the notice to end tenancy from the tenants, by not advertising a raised rent or by lowering the rent and recovering her loss from the tenants.

Ordinarily a tenant is responsible for the loss of income suffered by the landlord due to the tenant's non-compliance with the tenancy agreement. In this case, the rental unit was vacant for three months after the tenant moved out. This means that it took the landlord three months to find a tenant. Based on the date of the advertisement and the increased rent, I find that these factors may have contributed to the prolonged vacancy. Accordingly, I find that the tenant is not responsible for the loss of income suffered by the landlord.

Based on Section 7 of the *Residential Tenancy Act*, I find that the landlord did not do whatever is reasonable to minimize the loss. Therefore, I dismiss the landlord's claim to recover the loss of income she incurred.

### **Conclusion**

The landlord's application for a monetary order for worksheets #1 and #2 are dismissed without leave to reapply.

The landlord's application for a monetary order for worksheet #3 is dismissed with 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: November 17, 2020

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Residential Tenancy Branch