



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for loss of rent, for an order to retain the security deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on December 7, 2020, to the tenant’s forwarding address provided in the move-out condition inspection report. The landlord stated the package was returned unclaimed. A Canada post tracking number was provided as evidence of service. Refusal or neglect to pickup the package does not override the deemed service provision of the Act.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

The landlord testified that they tried to contact the tenant by text message after the package was returned; however, the tenant did not respond. File in evidence is a copy of the text message to the tenant.

The landlord agent appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Is the landlord entitled to a monetary order for loss of rent?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The parties entered into a fixed term tenancy which began on March 11, 2020 and was to expire on March 31, 2021. Rent in the amount of \$1,600.00 was payable on the first of each month. The tenant paid a security deposit of \$800.00. The tenancy ended on November 30, 2020.

The landlord testified that the tenant gave notice on October 31, 2020, to end the tenancy on November 30, 2020, contrary to their fixed term tenancy agreement. Filed in evidence is a copy of the tenant's notice to end tenancy.

The landlord testified that they immediately advertised the rental unit. The landlord stated that they had some showings in November 2020, which the tenant was aware of. The landlord stated that due to the time of the year and the concerns around Covid they were unable to find a new renter for December 2020 and January 2021. The landlord stated that in February 2021, they found a new renter; however, that tenancy did not commence until March 1, 2021. The landlord stated due to the tenant's breach of their tenancy agreement they lost rent for three months. The landlord seeks to recover loss of rent in the total amount of \$4,800.00.

File in evidence is proof of advertising, proof of showings and a copy of the new renter's tenancy agreement.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

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

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

#### **Tenant's notice (fixed term)**

*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,*

...

In this case, the evidence of the landlord was that the tenant breached the fixed term tenancy by providing notice to end the tenancy on October 31, 2020, with an effective date of November 30, 2020. However, under the Act the tenant was not entitled to give notice to end the tenancy prior to the date specified in the tenancy agreement. I find the tenant has breach section 45(2) of the Act as the earliest date they could have legally ended the tenancy was March 31, 2021 as stated in the tenancy agreement.

However, under section 7(2) of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss.

The duty to minimize the loss begins when the party entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will have an effect on a monetary claim, where the party who claims compensation can substantiate such a claim.

In this case, the evidence of the landlord was that advertised the rental unit, had multiple showings, and found a new renter that took possession of the unit on March 1, 2021. I find the landlord made reasonable efforts to minimize the loss. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$4,800.00**.

I find that the landlord has established a total monetary claim of **\$4,900.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$800.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$4,100.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

### Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *ACT Tenancy Act*.

Dated: March 18, 2021

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Residential Tenancy Branch