



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding HOMELIFE ADVANTAGE REALTY  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, MNDCL-S, FFL

### Introduction

The Landlord filed an Application for Dispute Resolution on August 15, 2022 seeking an order to recover the money for unpaid rent and other money owing, and recovery of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on May 11, 2023. In the conference call hearing I explained the process and provided each party the opportunity to ask questions.

Both parties attended the telephone conference call hearing, and I provided each the opportunity to present oral testimony and make submissions during the hearing. At the outset, both parties confirmed they received the prepared evidence of the other. On this basis, the hearing proceeded as scheduled.

### Issues to be Decided

Is the Landlord entitled to compensation for the rent amounts and/or other money owed, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

### Background and Evidence

The Landlord provided a copy of the tenancy agreement and both parties agreed on the terms therein in the hearing. The parties signed the agreement on May 31, 2022 for the tenancy starting on June 1, 2022, with the fixed term ending on May 31, 2023. The monthly rent amount was \$2,700. The Tenant paid a security deposit amount of \$1,350.

The agreement contains the provision addressing an early end of the tenancy:

If this is a fixed term tenancy and the agreement does not require the tenant to vacate at the end of the tenancy, the agreement is renewed as a monthly tenancy on the same terms until the tenant gives notice to end a tenancy as required under the *Residential Tenancy Act*.

An addendum to the agreement contains the following clause:

If the Tenant wants to end the lease before the term of the lease is up there will be a cancellation fee equal to 50% of the monthly rent plus GST. The fee is due upon the tenant notifying [the Landlord] of their intent to vacate in writing. This in no way releases the Tenant from his/her responsibility to pay rent until another suitable tenant, approved by [the Landlord], is secured. A signed, written Notice to Vacate is required prior to the Rental Property being advertised for rent at current market rate as determined by the Property Manager. The cancellation fee is to be paid at the time the Notice to Vacate is given, or the cancellation fee plus an additional \$25 will be taken from the Tenant's security deposit. The cancellation fee does not need to be noted on the move out condition report in order to be deducted.

The Tenant stated their need to end the tenancy based on the unsuitability of the rental unit for their type of work, which was the basis for their need for the rental unit. The Tenant provided evidence in the form of the "Notice of Termination by Tenant" document, forwarded to the Landlord on July 18, 2022. This contains the Tenant's notification to the Landlord of the following points and reasons for ending the tenancy:

- "The keys were taken with no access granted for tenant while paying the monthly lease rental of \$2,700."
- The Landlord did not take steps to seek and secure new tenants for the rental unit, "as evidenced by post on the [Landlord's] site being removed."
- Upon seeing the ad for the rental unit removed on June 24, the Tenant concluded the rental unit was again rented. (The Tenant attached images from the site, a list that does not include the rental unit.)
- This notice serves as the Tenant retroactively terminating the lease, effective July 1, 2022.

The Tenant provided an affidavit dated March 3, 2023, enclosing the following points:

- they met with the Landlord on June 17, 2022 at the rental unit and returned the keys
- the Landlord informed the Tenant at that time that they would not return the security deposit – the Landlord stated nothing about subsequent months owing
- on July 6, 2022 the Tenant received an email stating their account was overdue by \$2,650

- the Tenant informed the Landlord to say they should not owe any rent “as the [rental unit] was not listed for rent on the [Landlord’s] website like all the other rentals”

In the hearing, the Landlord stated they received a notice to end tenancy from the Tenant on June 14. They advertised the rental unit’s availability immediately via their own site, craigslist, and Facebook, and had showings from June 17<sup>th</sup> onwards. The Landlord eventually rented the unit on September 1<sup>st</sup> to new tenants.

The Landlord acknowledged the posting for the rental unit’s availability “fell off” the website for 4 days in total; however, the posting remained on craigslist and Facebook. The start of the advertisement was June 14<sup>th</sup> on their own site, and June 16<sup>th</sup> on Facebook and craigslist. The ad was down temporarily from the Landlord’s own site on June 24 to 27.

As on their Monetary Order Worksheet prepared for this hearing, the Landlord seeks the following amounts that total \$6,992.50:

- monthly rent for July and August: \$5,350
- cancellation clause as per addendum: \$1,442.50
- Application filing fee: \$100.

### Analysis

The *Act* s. 45 covers how a tenant may end a fixed-term tenancy. It provides that a date shall not be earlier than one month after the receives such notice, and not earlier than the end-of-tenancy date in the agreement.

I find as fact that the tenancy here was of a fixed-term in duration. Here, the Landlord received a notice from the Tenant; however, the Tenant sought to end the tenancy earlier than the end-of-tenancy date in the agreement. Legally speaking, the Tenant is obligated to fulfill the tenancy agreement through to the end of its term.

A principle governing any claim for compensation, as set out in s. 7(b) of the *Act*:

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.

I find the tenancy agreement in place between the parties conferred rights and obligations. This includes the duty to give a proper notice to end the tenancy. There is no evidence the

Tenant have proper notice to the Landlord within the timelines set by the *Act*. Because of this, the Landlord suffered a loss without a tenant in place for the subsequent months of July and August. This was, essentially, because of the Tenant's breach of the *Act*, with very short-term notice going to the Landlord about ending the tenancy.

The Landlord testified they had a new tenant in place for September 2022. I am not fully satisfied, based on insufficient evidence, of the Landlord's efforts at advertising and showing the rental unit during this timeframe. I find the advertisement being removed from the Landlord's own website was detrimental to obtaining new tenants in a timelier fashion. Also, there is no record of the Landlord's efforts at showing the rental unit.

In balancing the two competing interests, I grant the Landlord a rent replacement for the month of July 2022. This is the equivalent of one single month of rent at \$2,700. I find the Tenant paid \$50 of this amount previously; therefore, I reduce the amount to \$2,650.

The Landlord also claimed a cancellation fee for the amount of one-half month's rent, at \$1,442.50. The Landlord added \$25 for the Tenant not paying this at the time they gave their notice, as well as GST.

The *Residential Tenancy Regulation* in s. 7 sets out a list of non-refundable fees that a landlord may charge. This does not include a cancellation fee of any kind. The *Act* s. 5 provides that a landlord and a tenant must not avoid or contract out of the *Act* or the *Residential Tenancy Regulation*. I find the clause in place in the addendum is not in line with the *Residential Tenancy Regulation*. On this basis, I grant no compensation for this to the Landlord.

Additionally, if the Landlord is intending the clause to represent a form of liquidated damages, I grant no compensation for this reason, even though it is not worded as such in the Addendum. I find the amount does not represent a genuine pre-estimate of loss such as interviewing, administration, and re-renting of the rental unit, and exists only as an arbitrary penalty.

In sum, I find the Landlord experienced a monetary loss as a result of the Tenant's breach. I have applied the overarching principle of mitigation to the Landlord's claim. I find the Landlord is entitled to the amount of \$2,650.

Because they were moderately successful in their claim, I grant the Landlord reimbursement of \$50 of the Application filing fee. The sum total of the award to the Landlord is \$2,700.

The *Act* section 72(2) gives an arbitrator the authority to make a deduction from any deposit held by the landlord. The Landlord has established a claim of \$2,700. After setting off the security deposit amount of \$1,350, there is a balance of \$1,350. I am authorizing the Landlord to keep the security deposit amount and award the balance of \$1,350.

### Conclusion

Pursuant to s. 67 and 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$1,350. I provide the Landlord with this Order, and they must serve this Order to the Tenant as soon as possible. Should the Tenant fail to comply with this Order, the Landlord may file this Order with the Small Claims Division of the Provincial Court where it will 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 s. 9.1(1) of the *Act*.

Dated: May 15, 2023

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Residential Tenancy Branch