



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order. Two agents for the landlord, the tenant and an advocate for the tenant participated in the conference call hearing on both dates.

The hearing originally convened on February 20, 2012. The landlord had served evidence on the tenant in accordance with the Act, but the tenant had not received all of the evidence. I adjourned the hearing to allow the landlord to re-serve all of their evidence on the tenant, and the hearing reconvened on March 12, 2012.

I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

### Background and Evidence

The tenancy began on September 22, 2011 as a fixed term tenancy to end on September 30, 2012. Rent in the amount of \$1100 was payable in advance on the first day of each month. The tenancy agreement includes a liquidated damages clause, which states that if the tenant ends the tenancy before the end of the fixed term, the tenant will pay the landlord \$500 in liquidated damages. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$550. The tenant gave notice on November 4, 2011 that she was vacating the rental unit. The tenant moved out and the landlord and tenant carried out a move-out inspection on December 15, 2011.

### *Landlord's Evidence*

The landlord began advertising to re-rent the unit on November 15, 2011, but was unable to re-rent the unit until mid-March 2012. The landlord has claimed unpaid rent and lost revenue for December 2011 through March 15, 2012 in the amount of \$3850. The landlord also claimed \$25 for a late rent fee for December 2011; a \$100 move-out fee charged by the strata; and \$500 in liquidated damages. The landlord acknowledged that the tenant was not given a copy of the strata by-laws until November 4, 2011. The

landlord also stated that the liquidated damages amount was a genuine pre-estimate of the costs of re-renting, which covers the costs such as advertising, credit checks and the costs to show the rental unit.

### *Tenant's Response*

The tenant moved out because she believed that the landlord was in breach of the tenancy agreement. The tenant requested that the landlord professionally clean the washing machine, because the tenant was concerned about mould growing in the washing machine. The ventilation system for the rental unit is in the same closet as the washing machine, and the tenant was concerned about mould particles circulating throughout the unit. The landlord failed to properly address the tenant's complaints, so the tenant moved out.

The landlord did not provide any evidence to establish that they began advertising the rental unit on November 15, 2011. The landlord did not begin advertising until December 9, 2011, and they advertised the unit for \$100 more than the tenant's rent. The landlord refused to advertise the rental unit as available beginning December 15, 2011, and informed the tenant that her notice would be effective December 31, 2011.

The tenant acknowledged that the landlord can keep the \$550 security deposit for the rent for December 1 to 15, 2011. The tenant had requested that the landlord keep the security deposit as rent for that time period, but the landlord refused to do so.

### Analysis

I find that the landlord is entitled to \$500 for liquidated damages. If the tenant had problems with the rental unit she could have applied for dispute resolution for an order that the landlord address the problem, but instead the tenant chose to breach the fixed term and move out.

The landlord is also entitled to \$550 for unpaid rent for December 1 to 15, 2011 and the \$25 late rent fee for December rent. The security deposit may not be used toward rent unless the landlord agrees, so the tenant was responsible for paying rent when it was due.

I find that the landlord is not entitled to the lost revenue claimed for December 15, 2011 to March 15, 2012. As soon as a landlord is aware that a tenant intends to vacate, the landlord must take reasonable steps to attempt to re-rent the unit as soon as possible. The landlord should have begun immediately advertising the rental unit, at the same rental amount as the tenant was paying, and indicated that the rental unit would be available on December 15, 2011.

The landlord is not entitled to the move-out fee, as they did not provide the tenant with a copy of the strata by-laws with the tenancy agreement at the outset of the tenancy.

As the landlord's claim was partially successful, they are entitled to partial recovery of the filing fee for the cost of their application, in the amount of \$25.

Conclusion

The landlord is entitled to \$1100. The remainder of the landlord's claim is dismissed.

I order that the landlord retain the security deposit of \$550 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$550. This order may be filed in the Small Claims 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: April 2, 2012.

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Residential Tenancy Branch