



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

Has the landlord established that there is outstanding rent?

### Background and Evidence

The parties agree that this tenancy started on July 01, 2013 for a fixed term which was not due to end until June 30, 2013. Rent for this unit was \$1,900.00 per month and was due on the 1<sup>st</sup> day of each month.

The landlord testifies that the tenant sent the landlord an email Notice to end the tenancy on September 30, 2012. The tenant told the landlord that the reason the tenant wanted to end the tenancy was because the tenant had been advised that it was not in the tenants or the tenants children's best interests to live in the same neighbourhood as the tenants children's father.

The landlord testifies that they started to advertise the unit for rent and the unit was re-rented for January 01, 2013 after the landlord had applied for Dispute Resolution. A hearing took place on March 01, 2013. At that hearing the landlord was awarded a loss of rent for November, 2012. The landlord was at liberty to file a new application for further months' rent. The landlord now seeks to recover a loss of rent for December, 2012 of \$1,900.00.

The landlord testifies that the unit had to be re-rented at a lower rent of \$1,850.00 for the remaining term of the tenancy. The landlord has provided a copy of the advisements placed to re-rent the unit and a copy of the new tenancy agreement for the new tenants for January 01, 2013. The landlord seeks to recover a loss of rent of \$50.00 for each of the remaining six months of the term of the tenancy to an amount of \$300.00.

The tenant testifies that she did email the landlords to end the tenancy as the safety of the tenant and the tenant's children was compromised. The tenant testifies that since she has vacated the unit the tenant's daughter has been sexually assaulted, there has been a brake in at the tenants unit and the tenant's phone has been tapped. The tenant states this shows that the tenant was right to end the tenancy as the tenant also did not want to compromise the safety of the three students living in the basement unit.

The tenant testifies that there was a family that were interested in the unit on a rent to own basis. They had the money and wanted to move in quickly. However at the last hearing the landlord described those potential tenants as hoarders and stated that they could not pay the rent. The landlord could have rented to this family and mitigated the loss of rent.

The landlord disputes the tenant's testimony. The landlord agrees that there was a family interested in doing a rent to own agreement for the property. The landlord testifies that they met with that prospective tenant but had some concerns as the prospective tenant was on disability and had no income. He had informed the landlord that he had an action in the courts suing a hospital for malpractice and would soon be coming into a large amount of money. That person gave the landlord permission to contact his lawyer dealing with the lawsuit. The landlord testifies she spoke to the lawyer and was informed that these types of lawsuits can go on for many years. The landlord testifies that she also called the prospective tenants current landlord for a reference and was told that he was not willing to provide a good reference as the tenants were hoarders and did not keep the place clean. The landlord testifies that they then made the decision not to do a rent to own agreement with this family.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for a loss of rent for December, 2012; I refer the parties to s. 45(2) of the Act which states:

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.

While I sympathise that the tenant had issues with safety for herself and her family; as this safety was not compromised due to any fault, actions or neglect on the part of the landlord then the fixed term lease agreement signed by the parties remained in effect and the earliest the tenant could have legally ended the tenancy would have been June 30, 2013.

The tenant chose to end the tenancy on October 31, 2012 thus breaching the fixed term agreement, and the landlord was unable to re-rent the unit until January 01, 2013, despite placing many advertisements for the unit on different internet sites.

The loss of rent for November, 2012 was dealt with at a previous hearing and due to the timing of that hearing the landlord was given leave to reapply in the event the unit was not re-rented for the following month. In this instance 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 he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy. I therefore find the landlord is entitled to recover a loss of rent for December, 2012 of **\$1,900.00**. I further find as the landlord had to re-rent the unit at \$1,850.00 per month to the new tenants the landlord suffered a loss of rent of \$50.00 per month for the remaining six months of the original lease agreement. Consequently, the landlord is entitled to recover the amount of **\$300.00** from the tenant for this difference in the rent for six months.

The landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,250.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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: August 21, 2013

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Residential Tenancy Branch

