



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, OPB

### Introduction

This hearing dealt with the landlords' Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlords' agent and the female tenant.

At the outset of the hearing I clarified that the tenants vacated the rental unit and as such the landlords are not in need of an order of possession. Therefore I amend the landlords' Application for Dispute Resolution to exclude the matter of possession.

### Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for lost revenue and for damage to the rental unit, pursuant to Sections 37, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties agree they entered into a 2 year fixed term tenancy agreement beginning November 1, 2013, after living in the rental property for the previous 4 years, for a monthly rent of \$1,500.00 due on the 1<sup>st</sup> of each month with a security deposit of \$750.00 and a pet damage deposit paid. The landlord submitted the pet damage deposit was \$500.00; the tenant submitted the pet damage deposit was \$750.00.

The parties also agree the tenancy ended in mid-April 2014, when the tenants vacated the rental unit. The parties acknowledge that the landlords requested the tenant stay and/or pay rent for at least 6 months but that the tenants rejected that proposal.

The landlord submits the tenant agreed then to pay for the months of May and June 2014 but when they went to cash the tenant's cheques for these months they were returned as the tenants had placed stop payments on them.

The tenant submits that she had not agreed to pay for May and June 2014 but rather she wanted to see if she could find someone to re-rent the unit and/or take over the remainder of the fixed term tenancy agreement. The tenant submits the landlords rejected this proposal.

The landlords submit they did not advertise to re-rent the unit but rather on or about the beginning of May 2014 they placed the rental unit up for sale and they sold the property with the closing being towards the end of June 2014.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45(2) of the *Act* stipulates that a tenant may end a fixed term tenancy by giving the landlord a 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.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

As there is no evidence before me that the landlords had breached a material term of the tenancy or that the tenants had informed the landlords that they had breached a material term of the tenancy, I find that the earliest the tenants could have end the tenancy was the end of the fixed term, October 31, 2015.

As such, I find the tenants are responsible for the payment of rent to October 31, 2015 subject to the landlords' obligations to mitigate these losses.

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

Section 7(2) states that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, regulation or tenancy agreement must do whatever is reasonable to minimize the damage or loss.

As the landlords chose to advertise the rental property to sell it and did not even attempt to re-rent the unit I find the landlords took no steps at all to minimize their loss of revenue for either the month of May or June 2014. As such, I find the landlords are not entitled to recover any lost revenue because they failed to fulfil their obligations under Section 7(2).

### Conclusion

Based on the above, I dismiss the landlords' Application for Dispute Resolution in its entirety.

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: October 10, 2014

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Residential Tenancy Branch

