



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNDC, MNR, MNSD, O, FF

### Introduction

This hearing dealt with the landlord's claim for monetary compensation from the tenants for loss of rent and recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to the other parties' submissions. The landlord had requested retention of the security deposit in making this application; however, both parties agreed that the landlord had refunded the security deposit to the tenants and the landlord is no longer in possession of the security deposit.

### Issues(s) to be Decided

Has the landlord established an entitlement to a Monetary Order for loss of rent for the month of August 2009?

### Background and Evidence

Upon hearing undisputed testimony of both parties, I make the following findings. The tenancy commenced January 1, 2007. The tenants were required to pay rent of \$829.00 on the 1<sup>st</sup> day of every month. On July 11, 2009 the tenants gave notice to end the tenancy and vacated the rental unit on July 15, 2009. A tenant from another rental unit in the building moved into the tenants' rental unit on August 1, 2009.

The landlord submitted that the since another tenant moved into the rental unit, the landlord suffered a vacancy in that other unit. The landlord is seeking to recover loss of

rent from the tenants for the month of August 2009 equivalent to the amount of rent the tenants were required to pay for the rental unit. Upon enquiry, the landlord stated that he started advertising “immediately” but could not recall a specific date. The landlord could not recall when an agreement was made with the other tenant to occupy the tenants’ rental unit. The landlord did not provide documentary evidence to show advertising efforts or the date the other tenant entered into a tenancy agreement for the tenants’ rental unit. The landlord stated that the male tenant had agreed to pay rent for August 2009 and then when the landlord contacted the tenant in August 2009 the tenant refused to pay.

The tenants acknowledged that they gave late notice to end tenancy and explained that they had been on a waiting list for a two bedroom unit but one was not available in the building so they found a two bedroom unit elsewhere and gave notice as soon as they were accepted at their new location. The tenants did not feel obligated to compensate the landlord for a vacancy in a different rental unit. After making an enquiry with the Residential Tenancy Branch, the tenants decided not to pay the landlord rent for August 2009.

### Analysis

Where a tenant wishes to end a month to month tenancy, the tenant is required to provide written notice to the landlord at least one month before the effective date of the notice and the effective date must be the day before the day rent is due. To illustrate, where a tenant gives notice to end tenancy on July 11, 2009 the earliest the effective date could be is August 31, 2009. In this case, the tenants paid rent for the month of July 2009 but not August 2009 and by vacating the rental unit July 15, 2009 the tenants gave up possession of the rental unit and ended the tenancy.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. However, section 7(2) also requires that the party making the claim for compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

The party making a claim for compensation has the onus or burden to prove the claim. In proving the claim, the applicant must provide sufficient evidence to establish

1. the other party violated the Act, regulation or tenancy agreement;
2. the violation resulted in damages or loss to the applicant;
3. the quantum of the amount claimed; and
4. the applicant did whatever was reasonable to minimize the damage or loss.

In this case, I am satisfied the tenants violated the Act by giving insufficient notice to end tenancy. I am also satisfied that there was a vacancy in another unit and that the landlord incurred a loss that was approximately equivalent to the amount of rent the tenants were required to pay for one month. However, in order to be successful in obtaining a Monetary Order, the landlord must also satisfy me that the landlord made every reasonable effort to minimize the loss of rent.

Since the tenants had given notice on July 11, 2009 it was not unreasonable to expect that a new tenant could be obtained for August 1, 2009. In the absence of documentary evidence or clear verbal testimony to demonstrate when the landlord secured a replacement tenant for the tenants' former unit and when advertising efforts commenced, I find the landlord failed to sufficiently establish that the landlord did whatever was reasonable to minimize the loss of rent.

In light of the above finding, the landlord has failed to meet the landlord's burden to prove an entitlement to recover the loss of rent from the tenants and I dismiss the landlord's application.

Conclusion

The landlord failed to demonstrate that the landlord did whatever was reasonable to minimize its damage or loss in order to establish an entitlement to recover loss of rent from the tenants. Therefore, I dismissed the landlord's application without leave to reapply.

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: December 09, 2009.

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Dispute Resolution Officer