



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### **Dispute Codes:**

MNR, FF

### **Introduction**

This hearing was convened in response to an application by the landlord for a Monetary Order to recover unpaid rent / loss of revenue and inclusive of recovery of the filing fee associated with this application.

Both, the landlord and the tenant, attended this hearing and each participated with their submissions, affirmed testimony, questions, and witness.

### **Issue(s) to be Decided**

Is the landlord entitled to the monetary amounts claimed for: loss of revenue due to the tenant's non-compliance with the Act, regulations or tenancy agreement, and the filing fee?

### **Background and Evidence**

The following is undisputed by the parties. The tenancy began June 2009 and ended April 30, 2010. Rent in the amount of \$800 was payable in advance on the first day of each month.

The following is in dispute. The landlord claims he received the tenant's verbal notice to vacate (Notice to End) on April 27, 2010 that the tenant would vacate the rental unit April 30, 2010. The landlord's affirmed testimony is that April 27, 2010 was the first time the landlord received notification by the tenant of their plan to vacate.

It should be noted that the applicant is one of two landlords, as owners or agents, and that the two landlords have previously jointly administered this tenancy, but due to a breakdown in the relationship, they no longer communicate in respect to this tenancy.

The tenant's testimony is that on February 28, 2010 they verbally notified the non-applicant landlord (the spouse) that they were vacating at the end of March or April 2010. The tenant testified that they again verbally notified the landlord on March 02, 2010 they were staying for March. The tenant testified that on April 01, 2010 they verbally notified the landlord they would vacate April 30, 2010 – which the landlord disputes of having any knowledge. The landlord testified that if he had such knowledge he may have been able to mitigate any loss of revenue for May 2010.

The tenant provided a written statement by the applicant's spouse stating the tenant "orally" advised her on February 28, 2010 of their intention to vacate on April 30, 2010. The statement goes on to state, "*That was fine with me and I advised (the applicant landlord) of the same on February 28, 2010*". The applicant disputes this claim, and provided testimony that on February 28, 2010 their spouse was not within the Province, and could not have been notified by the tenant. The applicant testified that regardless, he was not subsequently advised, as claimed by the spouse's statement, and would look for the tenant to provide written notice to vacate.

In response to the landlord's dispute - that the landlord was verbally notified on April 01, 2010 the tenant was vacating April 30, 2010 - the tenant provided the applicant's spouse as a witness, prefacing that she would state she was verbally notified on April 01, 2010 by the tenant that they would be vacating.

*Witness 1 – EB for the tenant*

*The witness provided affirmed testimony. The witness testified that on April 01, 2010 the tenant gave her verbal notice that they, "were possibly leaving by the end of April".*

The tenant further testified that they verbally notified the landlord – that at least one of the landlords was seemingly satisfied with their verbal notice and that they should not be held accountable for any miscommunication between the landlords.

The applicant claims loss of revenue for May 2010 in the amount of \$800 in lost rent. The landlord was subsequently able to re-rent the unit for June 01, 2010.

**Analysis**

I find that in this tenancy there are two individuals as landlords. I find that the two landlords, for their own personal reasons, have not effectively communicated about this tenancy. None the less, the landlord applies for compensation on the basis they could

not have reasonably mitigated their loss of revenue for May 2010 without the benefit of a written notice from the tenant.

Based on the testimony of the parties, and on the preponderance of all the evidence before me, I find that while the Residential Tenancy Act (the Act) requires tenants to give one full month's written notice that they are vacating, there is no provision in the Act whereby tenants who fail to give the prescribed notice will be automatically held liable for loss of income for the month following the month in which they give their notice. However, Section 7 of the Act does provide as follows:

#### **7. Liability for not complying with this Act or a tenancy agreement**

- 7(1) 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.
- 7(2) 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.

The Act also states, in part, as follows;

#### **How a tenancy ends**

**44** (1) A tenancy ends **only** if one or more of the following applies:

- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
  - (i) section 45 [*tenant's notice*];
  - (ii) section 46 [*landlord's notice: non-payment of rent*];
  - (iii) section 47 [*landlord's notice: cause*];
  - (iv) section 48 [*landlord's notice: end of employment*];
  - (v) section 49 [*landlord's notice: landlord's use of property*];
  - (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
  - (vii) section 50 [*tenant may end tenancy early*];
- (b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- (c) the landlord and tenant agree in writing to end the tenancy;
- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended.

Also, Section 45 states that the tenant's written Notice to Vacate must be given as follows:

**Tenant's notice**

- 45** (1) A tenant may end a periodic 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, and
  - (b) 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.

I find the tenant did not meet the requirements of sections 44 or 45 of the Act. Instead, I find the tenant's evidence, and the circumstances in this dispute reveal that the landlord was presented with ambiguous information as to the tenant's plans to vacate.

**I prefer** the landlord's testimony and evidence that the landlord was never presented with sufficiently credible notice upon which to seek and secure new tenants. I am satisfied that the landlord, under the circumstances, did what was reasonable to minimize their loss, thus meeting the requirements for compensation under Section 7 of the Act.

As a result of all the above, I find the landlord has established a claim for lost revenue in the amount of **\$800**. The landlord is also entitled to recovery of their filing fee in the amount of **\$50**, for a total entitlement of **\$850**.

**Conclusion**

The landlord is being given a Monetary Order in the amount of **\$850**. If necessary, 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*.

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