



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for compensation for a loss of rental income, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

### Issue(s) to be Decided

1. Is the Landlord entitled to compensation for a loss of rental income and if so, how much?
2. Is the Landlord entitled to keep the Tenants' security deposit?

### Background and Evidence

On December 21, 2010, the Parties executed a Residential Tenancy Branch form of a tenancy agreement for a fixed term commencing January 1, 2011 and ending on August 31, 2011. The Parties also checked off a box which stated set out the term that "at the end of the fixed term the tenancy may continue on a month-to-month basis or another fixed length of time." The tenancy ended on August 31, 2011 when the Tenants moved out. Rent was \$1,400.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$700.00 on December 21, 2010.

The Tenants left a voice mail message for the Landlord on July 31, 2011 advising her that they were ending the tenancy on August 31, 2011. The Landlord contacted the Tenants the following day and advised them that she required written notice. The Tenants argued that the tenancy agreement constituted written notice to the Landlord of their intention to vacate on August 31, 2011. On August 5, 2011 the Tenants mailed a letter to the Landlord advising her that they were ending the tenancy on August 31, 2011. The Landlord said that once she received the Tenants' written notice (on August 10, 2011), she began advertising the rental unit for availability in an online publication and the following month, on bulletin boards in grocery stores in the community. The Landlord said she was unable to re-rent the rental unit for September 2011 and lost rental income for that month.

## Analysis

Section 44(3) of the Act says as follows:

“If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.”

I find that the Parties' tenancy agreement provided the Tenants with two options at the end of the fixed term tenancy; they could either vacate the rental unit on the last day of the fixed term or the tenancy could continue on the expiry of the fixed term. I find that the Parties selected the option that the tenancy would continue at the end of the fixed term. Consequently, the Tenants were required under s. 45(2) of the Act to give the Landlord written notice no later than July 31, 2011 if they wanted to end the tenancy on August 31, 2011.

I find that the Tenants gave the Landlord verbal notice on July 31, 2011 however the Landlord advised the Tenants that she wanted written notice from them before she would look for new tenants. I find that the Tenants mailed their written notice ending the tenancy to the Landlord on August 5, 2011. Consequently, I find that the Tenants did not give the Landlord one full calendar month's notice *in writing* as required by s. 45(2) of the Act and therefore I find that they are liable for a loss of rental income for September 2011. Although the Tenants argued that the Landlord failed to contact them in advance to determine if they would be staying after the expiry of the fixed term, the Act does not place the onus on the Landlord to do so; instead s. 45 of Act places the onus on a tenant.

Section 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income. The Landlord said that she took steps to advertise the rental unit in an online publication as soon as she received the Tenants' written notice but was unable to find a new tenant for September 2011. The Tenants said they had no knowledge if the Landlord had taken these steps or not. In the absence of any contradictory evidence from the Tenants, I accept the evidence of the Landlord that she took reasonable steps to re-rent the rental unit.

Consequently, I find that the Landlord is entitled to compensation for a loss of rental income for September 2011 in the amount of \$1,400.00. I also find that the Landlord is entitled to recover from the Tenants the \$50.00 filing fee she paid for this proceeding. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenants' security deposit of \$700.00 in partial payment of the monetary award. The Landlord will receive a Monetary Order for the balance owing of \$750.00.

Conclusion

The Landlord's application is granted. A Monetary Order in the amount of **\$750.00** has been issued to the Landlord and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: December 01, 2011.

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Residential Tenancy Branch