



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MDSD & FF

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Tenants by mailing, by registered mail to where the Tenants reside on October 3, 2013. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to A Monetary Order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

### Background and Evidence

There are differences in the tenancy agreement provided by each party. One tenancy agreement provides the tenancy started on June 25, 2013 and the other provides it

started on June 28, 2013. Nothing turns on the difference in dates. In both cases the rent is set at \$1300 per month payable in advance on the first day of each month and the term is month to month. The tenants paid a security deposit of \$650 at the start of the tenancy.

On September 2, 2013 the tenants gave the landlord notice in writing they were vacating the rental unit on October 1, 2013. The tenants gave the landlord their forwarding address at that time. The tenant testified that they went to the landlord's rental unit several time on August 31, 2012 and September 1, 2013 to give notice but the landlords were not present. The Notice is dated September 2, 2013.

The landlords gave the tenants a letter dated September 18, 2013 which was not received by the tenants until September 23, 2013 stating the tenants did not give them adequate notice, that the landlord expected the tenants would pay the rent for October because of the late Notice but that the tenants were still required to vacate the rental unit on October 1, 2013.

The tenant submits the landlords have failed to mitigate their loss. They testified the landlord failed to advertise. The landlord testified they rented the premises to their friends in early September. However, that their friend needed to give a clear months notice and as a result their friend could not move in until November 1, 2013. The landlord testified that it is very difficult to rent premises unless a clear month notice is given as most people have to give a month notice to the landlord of the rental unit in which they are residing.

The landlord testified the tenants owe \$79.27 for the tenants' share of the hydro for the period July 20, 2013 to October 1, 2013. The tenants did not dispute this claim.

### Analysis

Section 45(1) of the Residential Tenancy Act provides 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.

Section 53(1) and (2) provides as follows:

### **Incorrect effective dates automatically changed**

**53** (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

The tenants failed to give the one month clear notice required by section 45(1) of the Residential Tenancy Act. To be effective the notice for September 30, 2013 the Notice would have to have been given by the end of August. The fact the tenants were unfamiliar with the Notice requirements under the Residential Tenancy Act is no defense.

However, section 53(2) provides that were a notice is given with an incorrect end of tenancy date because it fails the Act automatically self corrects such a Notice and makes it effective on the earliest date permitted under the applicable section. As a result the Notice self correct to set the end of tenancy date for October 31, 2013. The landlord required the tenant to leave by October 1, 2013. The landlord did not have the legal right to do so and effectively denied the tenants their right to remain the rental unit for the month of October.

Further, I am not satisfied the landlords properly mitigated their loss. The landlords rented the premises to their friends in early September and made no attempt to find tenants for October 1, 2013. Their friends were not required to give notice until the end of September if they were to rent the rental unit on November 1, 2013. A reasonable landlord fulfilling their obligation to mitigate as required by the Residential Tenancy Act would have attempted to re-rent the rental unit by advertising until the end of September and only then would they be in a position to enter into a tenancy agreement with their friends. One can understand why a landlord might want his/her friend to rent a rental unit but this should not come at the expense of a departing tenant.

**For the reasons set out above I dismissed the landlord's claim for loss of rent for October.**

I determined the landlords are entitled to the sum of \$79.27 for the tenants' share of the hydro for the period from July 1, 2013 to October 1, 2013. The tenants did not dispute this claim.

Monetary Order and Cost of Filing fee

**I granted the landlords a monetary order in the sum of \$79.27 plus the sum of \$50 in respect of the filing fee for a total of \$129.27.**

Security Deposit

**I determined the security deposit plus interest totals the sum of \$650. I ordered the landlord may retain the sum of \$129.27 from the security deposit. I further ordered that the landlord pay to the tenants the balance of the security deposit in the sum of \$520.73.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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.

Dated: December 17, 2013

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Residential Tenancy Branch

