



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC MNSD FF

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. A participatory hearing was held on August 29, 2019. The Landlord applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord and the Tenants both attended the hearing and provided testimony. The Tenants confirmed receipt of the Landlord's application and evidence. The Landlord stated he did not get the Tenant's evidence. The Tenants stated they dropped their evidence in the Landlord's mailbox on August 17, 2019. The Tenants provided proof of service. Pursuant to section 88 and 90 of the Act, I deem this evidence is served on August 20, 2019, the third day after it was left at the front door.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

During the hearing, I confirmed that the parties had a previous hearing, where an order was made regarding the security deposit. Given this, I decline to hear the Landlords request to claim against the deposit, as that issue has already been decided upon. I will focus on the merits of whether or not rent is owed. The previous order stands.

### Issue(s) to be Decided

- Is the Landlord entitled to compensation for lost rent?

### Background and Evidence

The Landlord stated that he is seeking one month's rent as compensation because the Tenants failed to give proper notice when they moved out. Both parties agree that the Tenant gave the Landlord written notice on August 7, 2018. Both parties also agree that monthly rent was \$1,248.00 and that rent was due on the first of the month. Both parties also agree that the Tenants were on a month to month tenancy agreement and that the Tenants moved out at the end of August 2018.

The Tenants assert that they had a verbal agreement in late July with the Landlord that they were moving out at the end of August 2018. However, the Landlord disputes this, and says that he cannot take action without proper written notice, which is why he asked for the notice from the Tenants in writing. The Tenants feel the Landlord acted unfairly when he only requested the written notice after some tensions arose.

The Landlord stated that he reposted the ad on August 8, 2018, and ran the ad until September 17, 2018, which is when he signed a new tenancy agreement. The Landlord stated that the new tenants moved in on October 1, 2018, but he was unable to re-rent for September so the Tenants should be responsible because they did not give a full month's notice.

The Landlord stated that he reposted the ad at \$1,200.00 on several sites. The Landlord provided a couple of excerpts from different ads to show that he was only asking for \$1,200.00, not more as the Tenant is alleging.

The Tenants stated that the Landlord posted the ad for \$1,400.00, but the Tenants were unable to point to documentary evidence to link this cost to the actual rental unit. The Tenants provided a video of a phone call they had with the Landlord inquiring about the place he had listed for \$1,400.00. The Tenants did not provide any evidence to show which unit this was for, other than referring to it in the video as the one for \$1,400.00.

The Tenant also produced a signed letter from a witness stating that he left a voicemail inquiring about this rental unit towards the end of August and the Landlord replied by text message saying it was "gone" (as of August 30, 2018). The Tenant provided this letter as well as the Landlord's text message response into evidence.

The Landlord explained that he has around 80 rental units and the Tenant must be confusing the ad for \$1,400.00 with this rental unit. The Landlord stated that ad was for a different unit.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

The Landlord is seeking to recover lost rent for September 2018, the period of time that the unit was vacant. I turn to section 45 of the *Act*:

#### **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.

In order for a notice to be valid, it must be in writing. Both parties agree that this Notice was not given by the Tenants formally until August 7, 2018, and the Tenants moved out at the end of August 2018. I find the Tenants breached section 45 of the *Act* by failing to give at least one month written notice to the Landlord. However, I find there is insufficient evidence the Landlord sufficiently mitigated his loss for September 2018. In making this determination, I note the Tenants have provided a signed letter from a witness stating that he inquired specifically about this rental unit, and was told it was not available for September 2018. I note the Landlord has provided snippets of the text he posted in the ads he posted. However, I note these are just snippets posted into a word document, and aren't the actual ads. I find they are not very compelling evidence as to

what he posted, for when, and for how much. I find the witness letter is more compelling in that the Landlord did not have the unit available for rent, as he has asserted. Ultimately, I find there is insufficient evidence that the Landlord mitigated his losses, and I find he is not entitled to recover September rent, in full. However, an arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I find the Tenants breached the Act by failing to give proper written notice at least one month prior to vacating. I award the Landlord a nominal amount of \$100.00.

Since the Landlord was partially successful in this application, I award him the recovery of the filing fee (\$100.00), pursuant to section 72 of the Act. In total, I award the Landlord \$200.00.

### Conclusion

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$200.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: August 29, 2019

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Residential Tenancy Branch