



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Decision Codes: MNRL-S

### **Introduction**

The Application for Dispute Resolution filed by the landlords seeks an order to retain the security deposit for the loss of one half of a months rent caused by the failure of the Tenants to give sufficient notice.

A hearing was conducted by conference call in the presence of a representative of the applicant and in the absence of the respondent although duly served. 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. The parties acknowledged they had received the documents of the other party.

I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing was served on the Tenants by mailing, by registered mail to where the Tenants reside on August 13, 2019. It was received by the Tenants two days later.

### **Issues to be Decided**

The issue to be decided is whether the landlords are entitled to an order to retain the security deposit?

### **Background and Evidence:**

The parties entered into a written tenancy agreement that provided that the tenancy would start on November 1, 2016, continue for one year and become month to month after that. The tenancy agreement provided that the tenant(s) would pay rent of \$1600 per month payable in advance on the first day of each month. The rent was

subsequently increased to \$1650 per month. The tenants paid a security deposit of \$800 at the start of the tenancy.

On July 2 2019 the tenants gave the landlord written notice they were vacating at the end of July.

The tenancy ended on July 31, 2019 when the tenants vacated the rental unit.

The landlord gave the following evidence:

- Within 20 minutes of receiving the tenants notice the landlord posted an advertisement on usedvictoria and her Facebook page advertising the rental unit for August 1 but stating they would consider August 15 occupancy.
- In the evening of July 2, 2019 the landlord was private messaged a response by a reliable source with good reference about a person ("the interested person") interested in the vacancy. She responded and provided her telephone number.
- The interested person contacted the landlord in the middle of the day on July 3, 2019. The landlord and the interested prospective tenant exchanged photos and videos.
- The interested person advised that she was moving to Victoria with her husband on August 21, 2019.
- In the evening of July 3 the interested person emailed the landlord and advised they would like to rent the rental unit. The landlord did not see this e-mail until the morning of July 4, 2019.
- The landlord also saw an inquiry from another prospective tenant which had been sent in the evening of July 3, 2019 but not seen by the landlord until the morning of July 4, 2019. This prospective tenant was not acceptable because she had a cat.
- The landlord also saw a second inquiry. This prospective tenant required that there be quiet in the daytime. The landlord has grandchildren who visit from time to time and could not guarantee quietness.
- At 1:55 p.m. the interested person sent an e-mail the landlord confirming they were in agreement with the proposed tenancy agreement which was to commence on August 15, 2019.
- The landlord testified that she felt there was a serious risk they would not be able to rent the rental unit to a suitable tenant for August 2019. She testified she felt it was in the best interest of both the tenant and the landlord that they should

accept this tenant with suitable references even though it meant the tenancy commenced on August 15, 2019.

The tenants gave the following evidence:

- The relationship between the landlord and tenant was on a friendship basis.
- They paid the rent early when requested by the landlord.
- There are errors in the lease.
- They did not cause any damage to the rental unit.
- They paid for carpet cleaning when they vacated.
- They were not able to find the landlord's advertisement.
- The landlord had plenty of time to find a new suitable tenant for August 1.
- They did not think that it was reasonable for the landlord to accept a new tenant within 2 days without properly considering whether a suitable tenant could be found that could move in on August 1, 2019.

#### Landlord's Application - Analysis

Section 46 of the Residential Tenancy Act provides where a tenant wishes to end a month to month tenancy the tenant must give the landlord one clear month written notice to be effective on the day before the rent is payable under the tenancy agreement for the subsequent month.

Section 53 provides that where Notice to End Tenancy states an end of tenancy date that does not comply with the section 46, the effective date is deemed to be the earliest date that complies with the section.

In this case the tenants failed to give the landlord a clear month Notice to End Tenancy when they gave the landlord Notice on July 2, 2019 setting the end of tenancy for July 31, 2019. The Act deems that the effective date of that Notice is August 31, 2019.

Legally, the tenancy did not come to an end because of the tenants Notice. It came to an end on July 31 2019 when the Tenants abandoned vacated) the rental unit.

Section 7(2) of the Act provides as follows:

Liability for not complying with this Act or a tenancy agreement

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.

Policy Guideline #5 Duty to Minimize Loss includes the following:

**Claims for loss of rental income**

In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent. Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the Legislation or the tenancy agreement, **the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect (my emphasis).** Oral notice is not effective to end the tenancy agreement, and the landlord may require written notice before making efforts to re-rent. **Where the tenant has vacated or abandoned the rental unit or site, the landlord must try to rent the rental unit or site again as soon as is practicable. (my emphasis)**

Monetary Order and Cost of Filing fee

After carefully considering all of the evidence, the Act and the Policy Guidelines I determined the landlords are entitled to retain the security deposit for the lost rent for the following reasons:

- a. The tenants breached the Act when they failed to give the landlord a clear month Notice to End Tenancy.
- b. Where the Notice does not provide for a clear month notice, the Act deems the effective date of the Notice to be the end of the ensuing month or the end of August in this situation.
- c. The Policy Guidelines provide that the landlord did not have a legal obligation to make reasonable efforts to find a new tenant under the Tenants' notice until the date following the date the Notice takes legal effect.
- d. The tenancy came to an end when the tenants vacated the rental unit at the end of July. The legal obligation of the landlord to find a tenant to rent the rental unit began at that time.
- e. I determined the finding of a new tenant who took possession on August 15 2019 shows a reasonable effort to find a new tenant when the law provides that the

landlord did not have a legal obligation to find a new tenant until after the tenants vacated the rental unit.

- f. I determined the landlord acted reasonably in that they started advertising within 20 minutes of receiving the notice. I accept the submission of the landlord that they after they found a suitable tenant they did not wish to put both parties to the risk that the rent for the entire month of August might be lost.

As a result I ordered the landlords shall retain the security deposit in satisfaction of their claim for loss of rent for the period August 1, 2019 to August 15, 2019.

**This decision is final and binding on the parties.**

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: November 26, 2019

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Residential Tenancy Branch