



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, MNRL-S

### Introduction

This hearing convened as a result of a Landlords' Application for Dispute Resolution, filed July 8, 2019, in which the Landlords sought monetary compensation from the Tenant for damage to the rental unit and unpaid rent as well as authority to retain the Tenant's security deposit.

The hearing of the Landlords' Application was scheduled for teleconference at 1:30 p.m. on October 22, 2019. Both parties called into the hearing on October 22, 2019. The hearing was adjourned by Interim Decision dated October 22, 2019. Also by Interim Decision I amended the Landlords' claim to include a claim for loss of rent only. This Decision must be read in conjunction with the Interim Decision.

The hearing reconvened on December 6, 2019. At that time only the Landlords called into the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlords and I were the only ones who had called into this teleconference.

Rules 7.1 and 7.3 of the *Residential Tenancy Branch Rules of Procedure* provide as follows:

#### **Commencement of Hearing:**

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

#### **Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As the Tenant was informed of the date of the adjourned hearing and the Landlords called in and were ready to proceed, I conducted the continuation in the absence of the Tenant.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. I confirm that the Landlords complied with my Interim Decision regarding delivery of evidence. The Tenant did not comply with my Interim Decision. Not all details of the Landlords' submissions and/or arguments are reproduced here; further, only the evidence specifically referenced by the Landlords and relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenant for unpaid rent pursuant to the fixed term tenancy agreement?

### Background and Evidence

Introduced in evidence was a copy of the tenancy agreement which provided that the tenancy was a month to month tenancy. The Landlord testified that they erroneously believed it was for a 1 year fixed term. The Landlord confirmed that although the tenancy agreement provides that rent is \$1,995.00 per month they agreed to reduce the rent to \$1,895.00 during the tenancy.

The Tenant indicated by email on May 24, 2019 that she wished to end her tenancy however, she did not give a specific date by which she intended to move. Email communication between the parties was provided in evidence and which confirmed that the Tenant failed to provide that date despite the Landlord's repeated requests.

The Landlord, A.K., testified that the first time they knew for sure which day the Tenant was going to vacate the rental unit was when she actually moved out on June 30, 2019.

A.K. further stated that although they tried to re-rent the rental unit as quickly as possible, without knowing when the Tenant was going to leave they were not able to re-rent it until August 2019 such that they lost a month's rent. In their claim they sought monetary compensation in the amount of \$1,895.00 representing the amount of rent they lost as a consequence of the Tenant's ineffective notice to end her tenancy.

## Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

[www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlords have the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

A tenancy may only be ended in accordance with the *Residential Tenancy Act*. A tenant may end a tenancy provided that the notice complies with sections 45 and 52 of the *Act*, which provide 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.
- (2) A tenant may end a fixed term 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,
  - (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
  - (c) 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.
- (3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.
- (4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

#### **Form and content of notice to end tenancy**

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
  - (b) give the address of the rental unit,
  - (c) state the effective date of the notice,
  - (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
  - (e) when given by a landlord, be in the approved form.

The Landlord confirmed that the Tenant did not advise as to the effective date of the notice such that the Landlord's were not able to begin advertising the rental unit until the Tenant vacated the unit. Documentary evidence submitted by the Landlords support this testimony. She further testified that until the Tenant moved out on June 30, 2019, they were not certain she was going to move out. As such, they were not able to re-rent the unit until August 2019.

In failing to give proper notice the Tenant is in violation of section 45 and 52. Although the Tenant argued at the first day of the hearing that she should be able to end her tenancy pursuant to section 45.1 of the *Act*, which allows victims of family violence to end fixed term tenancies in specific circumstances, the Tenant failed to submit the required evidence to support such a claim. In any event, the tenancy agreement was a periodic, not fixed term tenancy, such that section 45.1 does not apply.

I therefore find the Landlords are entitled to recover the \$1,895.00 in lost rent from the Tenant.

### Conclusion

The Landlords' amended claim for loss of rent is granted. In furtherance of this the Landlords are granted a Monetary Order in the amount of **\$1,895.00**. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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 6, 2019

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Residential Tenancy Branch