



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes

MNR, MNSD, & FF

Introduction

This hearing dealt with the landlord's application for a monetary claim due to the tenant's failure to pay rent. The landlord also seeks to retain the tenants' security deposit plus interest in partial satisfaction of this claim. Both the parties appeared for the hearing and were provided the opportunity to be heard and respond to the evidence of the other party.

Issues to be Determined

Has the landlord established a monetary claim due to unpaid rent? Is the landlord entitled to retain the tenants' security deposit plus interest?

Background and Evidence

This tenancy began on December 1, 2008 for the monthly rent of \$700.00 and a security deposit of \$350.00. On January 13, 2009 the tenants contacted the landlord indicating that they would be ending the tenancy. On January 20, 2009 the tenants provided notice to end the tenancy in writing. The tenants vacated the rental unit on January 31, 2009 but did not inform the landlord that they had vacated until February 3, 2009.

The landlord requested the following in the hearing for damages:

Loss of rent February 2009	\$700.00
Loss of rent March 2009 as a penalty against the tenants for breaching fixed term lease.	\$700.00
NSF fee charge	\$75.00
Reimbursement of property management fee to the landlord	\$341.25
Recovery of advertising cost	\$24.10
Recovery of filling fee	\$50.00
Total	\$1,890.35

The tenants acknowledged vacating the rental unit as of January 30, 2009 despite giving notice for the end of February 2009. The tenant made unsupported allegations

that the rental unit did not meet health and safety regulations and argued that they had to vacate because of the heavy snowfall.

Analysis

The landlord's application is granted in part. However, there are several issues with the landlord's claim and application. The landlord only filed requesting a monetary claim related to non-payment of rent and requesting to retain the tenant's security deposit but did not request compensation for loss or damage due to the tenant's breach of the *Act*. The landlord has also requested compensation for penalties which are prohibited under the *Act*. The landlord is allowed to claim liquidated damages if a fixed term lease is not fulfilled but the landlord is not allowed to charge a penalty. The landlord has also attempted to charge \$75.00 for an NSF fee when the regulations only allow for a charge of \$25.00. As a result I reject this portion the landlord's claim.

I am satisfied that the tenants gave notice and that notice was effective as of February 28, 2009. Therefore, the tenants are responsible for the payment of rent for that month for the sum of \$700.00. I also find that the tenants are responsible for reimbursing the landlord \$50.00 to recover the cost of filling this application. From this I Order that the landlord may retain the tenants' security deposit plus interest of \$350.44 in partial satisfaction of this claim.

I grant the landlord a monetary Order for the remaining balance owed of **\$399.56**. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord's application is granted in part and a monetary Order due to non-payment of rent by the tenants provided to the landlord.

Dated June 17, 2009.

Dispute Resolution Officer