



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes For the tenant- MNDC, MNSD, FF
For the landlord- MNDC, MNSD, FF

Introduction

This decision deals with two applications for Dispute Resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The tenant seeks a Monetary Order for money owed or compensation for damage or loss under the Act, a Monetary Order for the return of the security deposit and to recover the filing fee. The landlords seek a Monetary Order for money owed or compensation for damage or loss under the Act, a Monetary Order to keep all or part of the security deposit and to recover the filing fee.

Issues(s) to be Decided

- Are the tenants entitled to receive double the security deposit back?
- Are the tenants entitled to recover filing fees from the landlord for the cost of the application?
- Is the landlord entitled to keep all or part of the security deposit and interest?
- Is the landlord entitled to recover loss of income for February?
- Is the landlord entitled to recover filing fees from the tenant for the cost of the application?

Background and Evidence

The tenants viewed the rental suite around the middle of January, 2009. On January 18, 2009 they filled in the required credit application forms and paid a security deposit of

\$525.00. The landlord provided the tenants with a receipt for this. The tenants dropped off a television set around this time. The next day January 19, 2009 one of the tenants decided that he was unable to afford the rental unit and the other tenant was unable to pay the whole amount of the asking rent himself. The tenants decided that they could not move in and contacted the landlord to notify him of their decision. At this time they asked the landlord for their security deposit back and to arrange a time when they could collect their television.

The tenants testify that they tried to contact the landlord repeatedly after this to arrange a suitable time to collect the television and deposit but were unable to reach him or meetings that had been arranged fell through. One of the tenants visited the house and has told by other tenants residing there that the suite they were going to rent had been let on or around February 06, 2009. The tenants testify and have produced a letter dated February 13, 2009 that they sent to the landlord informing them of their forwarding address.

The landlord testifies that he was unable to re-rent the suite until March 01, 2009 and due to the tenants backing out of the rental suite in January he has lost revenue for the month of February of \$ 1,050.00. The landlord has requested to keep the tenants security deposit in partial payment of the loss of revenue and also requests the tenants pay him an additional amount of \$525.00 to cover the rent lost for this month.

The landlord testifies that he re-listed the property on an internet site at the end of January and when he failed to get tenants he then listed it in the local papers. The landlord testifies that it is hard to find the right sort of tenants at the end of the month. The landlord also contacted a prospective tenant who had been originally interested in renting the suite but they had already found another rental unit. The landlord disputes

the tenants' claims that he had re-rented the property around February 06 and has provided a rental agreement signed by the new tenants for March 01, 2009.

Analysis

I find that the tenants acted in good faith when they agreed to rent the rental unit for February 01, 2009. Due to unforeseen circumstances they were unable to go ahead with this arrangement and gave the landlord notice of this the next day on January 19, 2009. This would have enabled the landlord to re-list the rental unit immediately after the arrangement fell through. It is not the fault of the tenants that the landlord was unable to find new tenants to rent the suite as he may have encountered similar difficulties if other prospective tenants had not taken the suite. I do not believe the landlord was proactive in trying to re-rent the suite before the end of January 2009. Therefore, I dismiss his application to keep the tenants security deposit and claim for loss of revenue for February, 2009.

The tenants gave the landlord every opportunity to return their security deposit after providing him with a forwarding address and the landlord had 15 days to return this or apply for dispute resolution to keep the security deposit pursuant to s. 38(1) of the *Act*.

The *Residential Tenancy Act* s. 38(6) stipulates if a landlord does not comply with subsection (1) the landlord may not make a claim against the security deposit and he must pay the tenant double the amount of the security deposit. In this instance the landlord did not return the tenants security deposit or make an application to keep it within 15 days after receiving the tenants forwarding address. Therefore, I find the tenants are entitled to double the security deposit.



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As the tenants have been successful with their application they are also entitled to recover the \$50.00 for the cost of filing their application. A Monetary Order will be issued as follows:

Double the security deposit	\$1,050.00
Filing fee	\$50.00
Total amount due	\$1,100.00

Conclusion

A Monetary Order in the amount of **\$1,100.00** has been issued to the tenants and a copy of it must be served on the landlord. If the amount of the order is not paid by the landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.

The landlords' application is dismissed in its entirety without leave to reapply.

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: June 09, 2009.

Dispute Resolution Officer