



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes (MND), MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlords for a monetary order for loss of rental income, for repair expenses and to recover the filing fee for this proceeding. The Landlords also applied to keep the Tenant's security deposit.

The hearing started as scheduled at 9:00 a.m. however, by 9:10 a.m. the Landlords/Applicants had not dialled into the conference call. Consequently, the hearing proceeded in their absence.

Issues(s) to be Decided

1. Are the Landlords entitled to compensation for a loss of rental income and if so how much?
2. Are the Landlords entitled to compensation for repairs to the rental unit and if so, how much?
3. Are the Landlords entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on September 1, 2008 and ended on April 30, 2009. Rent was \$2,100.00 per month. The Tenant paid a security deposit of \$1,050.00 at the beginning of the tenancy. The Tenant said the Landlords did not do a move in or a move out condition inspection report and has not returned his security deposit.

In their application, the Landlords alleged that the Tenant gave verbal notice on April 3, 2009 that he was ending a one year fixed term early or on April 30, 2009 and as a result, the Landlords sought to recover a loss of rental income for May 2009. The Landlords also alleged that the Tenant verbally agreed to them keeping his security deposit to offset the loss of rental income. The Landlords also claimed on their application that the Tenant left nail holes in the walls of the rental unit and that they incurred paint expenses of \$160.00 to repair them.



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Analysis

The Landlords did not provide any documentary evidence such as a copy of a tenancy agreement in this matter and as a result, I cannot conclude that this was a fixed term tenancy. Furthermore the Landlords did not provide any evidence to corroborate their allegations that the rental unit had not been re-rented for May 2009 or that they had the Tenant's *written* authorization to keep the security deposit (as required by s. 38(1) of the Act). Additionally, the Landlords did not provide any evidence to show that they made reasonable efforts to re-rent the rental unit in order to mitigate their damages as required by s. 7(2) of the Act. Consequently, I find that there is insufficient evidence to support the Landlords' application and it is dismissed without leave to reapply.

Furthermore, I find that the Landlords did not do a move in or a move out condition inspection report as required by sections 23 and 35 of the Act. In failing to complete the condition inspection report, sections 24(2) and s. 36(2) of the Act state that the Landlords' right to claim against the security deposit for damages to the rental unit is extinguished.

RTB Policy Guideline #17 (Security Deposit and Set off) at p. 2 says that an arbitrator will order the return of a security deposit on a Landlord's application to retain the security deposit unless the tenant's right to it has been extinguished under the Act and whether or not the Tenant has applied for arbitration for its return. As the Landlords' application to recover the security deposit has been dismissed, I order the Landlords to return the Tenant's security deposit to him with accrued interest of \$5.25.

Conclusion

The Landlords' application is dismissed without leave to reapply. A monetary order in the amount of **\$1,055.25** has been issued to the Tenant and a copy of it must be served on the Landlords. If the amount is not paid by the Landlords, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and 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 17, 2009.

Dispute Resolution Officer