



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNR, MNSD, FF, SS, O

### Introduction

This matter dealt with an application by the Landlords for compensation a loss of rental income as well as to replace a satellite television receiver and to recover the filing fee for this proceeding. The Landlords also applied for an order permitting them to serve the Tenants in a different way than required by the Act and to keep the Tenants' security deposit.

The Landlords said the Tenants did not provide them with a forwarding address at the end of the tenancy so they served one of the Tenants in person at her place of work on July 10, 2009. The Landlords admitted that they did not try to contact the Tenants by e-mail or by telephone at their workplace to obtain a forwarding address. The Tenants admitted that they received the Landlords' hearing package. In the circumstances, I find pursuant to s. 71 of the Act that the Tenants were sufficiently served for the purposes of the Act.

### 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 other damages and if so, how much?
3. Are the Landlords entitled to keep the Tenants' security deposit?

### Background and Evidence

This month to month tenancy started on January 11, 2009 and ended on or about July 1, 2009 when the Tenants moved out. Rent was \$900.00 per month which was payable in advance on the 1<sup>st</sup> day of each month. Utilities were included in the rent. The Tenants paid a security deposit of \$450.00 on December 22, 2008.

In an e-mail to the Landlords dated June 30, 2009, the Tenants claimed that they would be ending the tenancy on July 15, 2009 due to a number of complaints including but not limited to excessive noise in the rental unit from other tenants and due to the Landlords' refusal to accept rent later than the 1<sup>st</sup> of the month. In their e-mail, the Tenants also authorized the Landlords to keep their security deposit in satisfaction of rent for July 2009.

The Landlords claimed that they were unable to re-rent the rental unit for July 2009 despite advertising it in the newspapers starting on July 3<sup>rd</sup> or 4<sup>th</sup>, 2009. The Landlords also claimed that a Star Choice satellite receiver was missing at the end of the tenancy. One of the Landlords claimed that she was advised by another tenant of the rental property on July 2, 2009 that the Tenants had moved out early so she went to the rental unit on July 2, 2009 and found the door unlocked.

The Tenants claimed that they sent the Landlords e-mails on March 2, 2009, April 18, 2009 and May 14, 2009 about being disturbed by excessive noise but admitted they did not tell the Landlords that if the problem was not rectified they would be ending the tenancy. The Tenants said that at the end of the tenancy, they left the satellite receiver in the rental unit, locked the doors and sent the keys to the Landlord by courier. Consequently, the Tenants argued that they were not responsible for replacing the satellite receiver.

## Analysis

Section 45(1) of the Act states that a Tenant of a month-to-month tenancy must give one clear months notice. The only exception to this rule, is s. 45(3) of the Act which states that 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 has given written notice of the failure, the tenant may end the tenancy without further notice to the Landlord.

Although the Tenants sent e-mails to the Landlords throughout the tenancy advising them about the noise and other issues, I find that they did not tell the Landlords that they would end the tenancy if the Landlords failed to rectify those issues. As a result, I find that the Tenants were required to give one month's written notice and the earliest their Notice dated June 30, 2009 could have taken effect would have been July 31, 2009. Consequently, I find that the Landlords are entitled to recover loss of rental income for July, 2009.

The Landlords have the onus of showing on a balance of probabilities that the Tenants did not return the satellite receiver. Given the contradictory evidence of the Tenants and in the absence of any additional or corroborating evidence from the Landlords, I find that there is insufficient evidence to conclude that the Tenants are responsible for the missing satellite receiver and that part of the Landlords' claim is dismissed.

I find that the Landlords are also entitled to recover the \$50.00 filing fee for this proceeding. I order the Landlords pursuant to s. 38(4) and 72 of the Act to keep the



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Tenants' security deposit in partial payment of the damage award. The Landlords will receive a monetary order for the balance owing as follows:

Loss of rental income:	\$900.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$950.00
Less: Security deposit:	(\$450.00)
Accrued interest:	<u>(\$0.18)</u>
Balance owing:	\$499.82

## Conclusion

A monetary order in the amount of **\$499.82** has been issued to the Landlords and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, 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: October 28, 2009.

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Dispute Resolution Officer