



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      CNC, CNL, MNR, MNSD, FF

### Introduction

The Landlords applied for compensation for a loss of rental income, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts. At the beginning of the hearing, the Landlords claimed that the tenancy has ended and as a result, the Tenant's application to cancel a Notice to End Tenancy for Cause and a Notice to End Tenancy for Landlord's Use of Property is dismissed without leave to reapply.

### Issues(s) to be Decided

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

### Background and Evidence

This month to month tenancy started on September 15, 2009 and ended on October 31, 2009 when the Tenant moved out. Rent was \$800.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$400.00 at the beginning of the tenancy.

On October 18, 2009, the Landlords served the Tenant with a One Month Notice to End Tenancy for Cause. On October 31, 2009, the Tenant gave the Landlords a letter advising them that she was moving out that day and left her keys to the rental unit. The Landlords said they thought they could not re-rent the rental unit until the Notice period expired and as a result, did not advertise the rental unit for rent until the beginning of December 2009. Consequently, the Landlords sought compensation for a loss of rental income for November 2009.

### Analysis

RTB Policy Guideline #3 – Claims for Rent and Damages for Loss of Rent states that a Landlord may elect to end a tenancy and sue the tenant for loss of rent. The damages to which a Landlord is entitled is an amount sufficient to compensate the Landlord for any loss of rent up to the earliest time the Tenant could have legally ended the tenancy. Under section 45 of the Act, a Tenant of a month-to-month tenancy must give one clear months notice. The Landlords served the Tenant with the One Month Notice on



# Dispute Resolution Services

Page: 2

Residential Tenancy Branch  
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October 18, 2009. Consequently, the earliest the Tenant could have ended the tenancy would have been November 30, 2009.

However, section 7(2) of the Act requires a landlord to take reasonable steps to re-rent a rental unit as soon as possible to minimize a loss of rental income. I find that the Landlords did not take any steps to re-rent the rental unit for November 2009 and as a result, I find that they are not entitled to compensation for a loss of rental income for that month. As the Landlords have been unsuccessful on their application in this matter, I find that they are not entitled to keep the Tenant's security deposit and I order them to return it to the Tenant. For the same reasons, I find that the Landlords are not entitled to recover the filing fee for this proceeding.

The Landlords stated on their application that the Tenant was not entitled to make a claim against the security deposit because she abandoned the rental unit and refused to participate in a move in or a move out inspection. I find that there is no evidence that the Tenant abandoned the rental unit (as defined under s. 24 of the Regulations to the Act. To the contrary, I find that the Tenant advised the Landlords in writing on October 31, 2009 that she was ending the tenancy that day and returned the keys and therefore the Landlords had no reason to believe that the tenant would be returning.

Furthermore, s. 36(1) of the Act only disentitles a Tenant from making a claim against a security deposit if the Landlord has given the Tenant 2 opportunities to do a condition inspection and the 2<sup>nd</sup> opportunity was given on an approved notice called a Final Opportunity to Schedule a Condition Inspection. I find there is no evidence that the Landlords gave the Tenant a written Final Notice as required by s. 17(2)(b) of the Regulations to the Act. Consequently, I conclude that the Tenant's right to make a claim against the security deposit is not extinguished.

## Conclusion

The Landlords' and Tenant's applications are dismissed. A monetary order in the amount of **\$400.00** 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: December 04, 2009.

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Dispute Resolution Officer