



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes:

**MNDC, MNSD, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for compensation for unpaid rent, to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions to me. I have considered all of the testimony provided.

### Preliminary Matter

At the start of the hearing the female tenant's surname indicated on the Application for Dispute Resolution was corrected.

The evidence submitted by the tenants was sent by registered mail on December 1, 2009. The landlord stated he received this evidence three days prior to this hearing. The evidence was received by the Residential Tenancy Branch on December 1, 2009. Residential Tenancy Branch Rules of Procedure, section 3.5, require evidence to be submitted at least five days prior to the hearing. The first and last days are not included; therefore, the tenant's evidence was late and not considered in my decision. The tenants were at liberty to provide oral testimony referencing their evidence.

### Issue(s) to be Decided

Is the landlord entitled to compensation for the loss of July 2009 rent revenue and overholding by the tenants?

May the landlord retain the deposit paid by the tenants in partial satisfaction of his claim?

Is the landlord entitled to filing fee costs?

### Background and Evidence

This tenancy commenced on July 1, 2008; rent was \$1,200.00 per month, due on the first day of the month. The tenants paid a deposit in the sum of \$600.00 on June 17, 2008.

During the hearing the parties agreed that on June 2, 2009 at approximately 8:30 pnm the tenants sent the landlord an email giving notice that they would move out on June 30, 2009. The landlord testified that he received this email on June 3, 2009.

The tenants testified that they believed the landlord had relieved them of any responsibility for a potential loss of rent revenue as the landlord agreed that they could move and sign a new tenancy agreement elsewhere.

The landlord testified that he did accept the tenant's notice and had told them that he would make efforts to locate another tenant for July 1, 2009. The landlord stated that he sent the tenants an email indicating that showing the unit did not necessarily mean he would be able to rent the unit by July 1, 2009. The landlord stated that there were some problems with access to the rental unit as the female tenant worked odd hours. The landlord stated he had also been given an incorrect tenant cell phone number which took time to rectify. The landlord stated that despite a number of calls and some interest he was only able to rent the unit for August 1, 2009; resulting in a loss of July rent revenue.

The tenant submitted that they felt the landlord had provided them with agreement that they could move and that they would not have signed another tenancy agreement if they had known they might be responsible for rent revenue loss.

The landlord stated that he gave the tenants a positive reference as he had found them to be very good tenants; it was just in the last month that a misunderstanding emerged.

Both parties agreed that a move out condition inspection occurred on July 1, 2009 during which no damages were claimed by the landlord. The landlord stated that the tenants did not move out on June 30, 2009 and remained in the unit two additional days. The tenants denied this claim and stated that they had moved out by June 30, 2009.

### Analysis

In the absence of evidence to the contrary, I find that the tenants did not provide written notice to end this tenancy, as provided in section 45 of the Act:

- (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
  - (a) is not earlier than one month after the date the landlord receives the notice, and
  - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The tenants may have misunderstood the landlord's intentions; however, I find it would have been unreasonable for the landlord to block the tenants from exercising their right to move. I find that the landlord's message to the tenants that showing the unit would not necessarily mean it would be rented provided the tenants with a clear indication that, despite efforts, the landlord might not be successful in renting the unit for July 1, 2009. There was no mutual agreement signed between the parties ending this tenancy; only notice given by the tenants which failed to meet the requirements of section 45 of the Act.

Therefore, I find that despite efforts to mitigate a loss the landlord has lost revenue for July 2009 rent and that the tenants must compensate the landlord for that loss in the sum of \$1,200.00.

I dismiss without leave to reapply the landlord's claim for two additional days of rent as there is no evidence before me that the tenant did not move out at the end of June.

I find that the landlord's application has merit, and I find that the landlord is entitled to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit plus interest, in the amount of \$604.87, in partial satisfaction of the monetary claim.

### Conclusion

I find that the landlord has established a monetary claim, in the amount of \$1,250.00, which is comprised of \$1,200.00 in July 2009 rent and \$50.00 in

compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit plus interest, in the amount of \$604.87, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of **\$645.13**. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court 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 07, 2009.

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Dispute Resolution Officer