



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution for compensation for loss or damages.

### Issues(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary Order for returned rent; for compensation for damage or loss and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 67, and 72 of the *Residential Tenancy Act (Act)*.

### Preliminary Issue

At the outset of the hearing the landlord testified that he had not received any evidence from the tenant regarding this dispute. I described to the landlord the tenant's evidence submitted for this hearing and the landlord agreed to proceed with the hearing with the proviso that an explanation of what documents were relied upon and to what extent for this decision.

I found the majority of documents submitted by the tenant to be either a copy of documents submitted by the landlord or not relevant to this hearing, as such, I have only relied on the additional documents for background into the tenancy.

### Background and Evidence

The tenant's submitted the following documents into evidence:

- A copy of a "move-in checklist" that shows the tenants would paid the full rent for 12 months, security deposit and key/fob deposit prior to move in;
- A copy of a tenancy agreement with addendums signed by the tenants on January 12, 2009 for a 1 year fixed term tenancy beginning on February 15, 2009 and ending February 14, 2010 for a monthly rent of \$2,100.00 due yearly in advance and a security deposit in the amount of \$1,100.00 was paid on January 20, 2009;

- Copies of negotiated cheques (front and back) for the full payment of the 12 months of rent and security deposit dated February 5, 2009 and January 12, 2009 respectfully;
- A copy of a letter dated October 21, 2009 from the landlord to the tenants with copies of the enclosed cheques (front and back) from the landlord to the tenants describing what each cheque was issued for;
- 32 printed pages of emails between the tenants and various parties, including the landlord, potential new tenants, outside parties regarding noise problems;
- An advertisement for the sale of the rental unit; and
- A receipt for carpet cleaning dated October 10, 2009 in the amount of \$136.49;

The landlord submitted the following documentary evidence:

- A written summary of events of the dispute dated December 17, 2009;
- A copy of a "move-in checklist" that shows the tenants would paid the full rent for 12 months, security deposit and key/fob deposit prior to move in;
- A copy of a tenancy agreement with addendums signed by the tenants on January 12, 2009 and by the landlord on January 22, 2009 for a 1 year fixed term tenancy beginning on February 15, 2009 and ending February 14, 2010 for a monthly rent of \$2,100.00 due yearly in advance and a security deposit in the amount of \$1,100.00 was paid on January 20, 2009;
- A copy of a Condition Inspection Report;
- An email dated April 21, 2009 from the landlord to the tenants agreeing to the tenant's proposal to extend the length of the term of the tenancy by one additional month at no additional cost to the tenants;
- A copy of a letter dated October 21, 2009 from the landlord to the tenants with copies of the enclosed cheques (front and back) from the landlord to the tenants describing what each cheque was issued for;
- Copies of cancelled cheques (front and back) as provided in the October 21, 2009 letter above;
- A copy of a letter dated November 4, 2009 from the landlord to the tenants advising the tenants of the landlord's position that the matter is resolved;
- A copy of part of the *BC Law and Equity Act*;
- A judicial decision from the Alberta Court of Queen's Bench dated February 2, 1987;
- A judicial decision from the BC Provincial Court Dated January 29, 2003; and
- A supplemental issues summary from the landlord dated December 23, 2009.

As this was the tenants' application to claim for loss or damages under the *Act*, the onus is on the tenant to provide evidence that meets the following 4 part test:

1. That a loss or damage exists;
2. The loss or damage results from a violation of the *Act* or tenancy agreement;
3. What is the value of the damage or loss; and
4. Steps taken to mitigate the damage or loss.

At the start of the tenancy, the landlord reduced the rental amount for this 12 month fixed term tenancy from \$2,300.00 per month to \$2,100.00 per month when the tenants agreed to pay the rent for the full 12 months term.

During the course of the tenancy the tenants found urban noises surrounding the residential property to be too bothersome for them and started to explore some options with the landlord. The tenants proposed in April, 2009 that they would go away for two months and the landlord could extend their fixed term by one month.

The landlord agreed to extend the duration of the 12 month fixed term tenancy to 13 months. The landlord confirmed in his email of April 21, 2009 that he would extend the term to 13 months with no additional cost to the tenants.

On September 14, 2009 the landlord sent an email to the tenants acknowledging their desire to end the tenancy prior to the end of the fixed term. The landlord stated he was willing to end the tenancy with a written 30 day notice and that he would return rent for the 4 months remaining in the term, excluding the 5<sup>th</sup> remaining additional month plus the return of any applicable deposit refunds plus \$1,000.00.

The tenants responded on September 15, 2009 providing written notice of their intent to vacate the property in 30 days and requesting rent for 5 months, full security deposit and key fob deposit in the amount of \$11,800.00.

The landlord confirmed in his testimony that he had offered the \$1,000.00 as an "extra" for inconvenience but once the tenant did not accept the original proposal the offer was rescinded.

The tenant contends that the rent for the month of March 2010, had been agreed to as compensation for a month of rent in May or June of 2009 as they vacated the premises for a period of 5 weeks during that time because of the noise and therefore it has a value of \$2,100.00 and should be returned as requested.

The landlord argues that the tenancy agreement had been amended to include a free month rent for the specific period of February 15 to March 14, 2010 and as such the tenants would have to complete the initial 12 month term of the tenancy agreement. By ending the tenancy early, the landlord contends, the tenants forfeit their right to that free month of tenancy.

In their testimony the tenants also claim \$5,000.00 in damages resulting from the costs incurred when they went away in May/June 2009 as per their agreement with the landlord. The tenants failed to provide any evidence of any costs or damages incurred or in fact that they even vacated the premises for that period of time.

### Analysis

As to the tenants' claim for damages and costs incurred to vacate the rental unit for 5 weeks, the tenants have failed to establish that a loss exists or if one does exist that it results from a violation of the *Act* or tenancy agreement.

Based on the evidence submitted I am convinced that the tenants intended or at least implied to the landlord, in their proposal of April 21, 2009, to complete the full 12 month fixed term of the tenancy in order to obtain the additional month of occupancy at no cost.

From the wording provided in the emails used by the parties of their agreement to the proposal I do not find that the free month at the end of the fixed term was to be a "replacement" for rent paid in May or June of 2009. I do find rather the landlord provided a generous compromise to appease the tenant's complaints regarding noise.

And finally, I find the landlord conveyed clearly that negotiation of the refund cheques provided to the tenant constitutes full and final satisfaction of all amounts owing to the tenants. By the tenants negotiating the cheques I find that they had accepted the terms expressed by the landlord.

As such, I again find that the tenants have failed to provide sufficient evidence to show that a loss or damage exists and that if it did that it resulted from a violation of the *Act* or tenancy agreement.

### Conclusion

Based on my findings, I dismiss the tenants' application in its entirety, without leave to reapply. As the tenants were unsuccessful in their Application for Dispute Resolution, I also dismiss their request to recover the filing fee for this application.

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: January 12, 2010.

---

Dispute Resolution Officer