

## **DECISION**

**Dispute Codes:** MNDC, MNSD and FF

### **Introduction**

This application was brought by the landlords seeking a Monetary Order for loss of rent and recovery of the filing fee for this proceeding and authorization to retain the tenants' security deposit in set off after the tenants did not move into the rental unit as stated on the written rental agreement.

### **Issues to be Decided**

This application requires a decision on whether the landlord is entitled to a Monetary Order for loss of rent, and recovery of the filing fee for this proceeding and authorization to retain the security deposit..

### **Background and Evidence**

The parties signed a rental agreement on August 27, 2009 under which the tenants were to take occupancy of the rental unit on September 15, 2009, amended by consent to September 28, 2009 due to illness of one of the current tenants at the time.

The tenants paid a security deposit of \$550 on or about August 27, 2009 and subsequently paid the rent of \$1,100 for October 2009.

Within a day of moving in, and having had the opportunity to examine the rental unit without furnishings, the tenants had a change of heart and decided not to proceed with the tenancy. They advised the landlord by telephone and cancelled the rent cheque for October.

During the hearing, one of the tenants stated that she suffers from an illness that makes her particularly vulnerable to allergens and during the move in, she had noted what appeared to be a considerable amount of black mould in the rental unit. She stated that she feared it would put her health at risk in the time it would take to verify and remedy the problem.

The tenants stated there was a strong odour in the rental unit which they deduced to be cat urine, although the landlord stated that the previous tenants had not had pets. He suggested that the odour may have resulted from the recent shampooing of the carpets and would probably have dissipated before long.

The landlord also submitted a letter from a flooring installer who replaced flooring in the rental unit in October and gave evidence that existing flooring was in reasonable condition and there was no mould or moisture on the flooring or sub flooring.

The landlord stated that dark staining in the carpets around the walls, shown in a number of photographs submitted by the tenants, was a result of stain that had been used in the baseboards which had leached onto the carpet edge during previous steam cleanings.

In essence, the landlord stated that he believed he may well have been able to resolve or assuage the tenants' concerns had he been given the opportunity to do so.

One of the tenants stated that she had been a tenant of the landlords in another rental unit and had found them to be excellent landlords.

The landlord stated that he began to search for new tenants immediately and was able to find new ones for November 1, 2009. As evidence that the rental unit was desirable and that he had given the respondent tenants reduced rent, he noted that the new tenancy included a rate approximately 10 per cent higher.

## **Analysis**

Section 7 (1) of the *Act* provides that, "If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results."

I find that the tenants have breached the rental agreement by failing to pay rent for October 1999 as agreed and by failing to give a full month's notice to end the tenancy as required by section 45 of the *Act*. Therefore, I find that the tenants are responsible for the landlords' loss of rent for October 20009.

Section 72(2)(b) of the *Act* provides that, where there is a finding that tenants in a rental agreement owe money to the landlord, the security deposit may be applied to the amount owed.

Accordingly, I find that the landlord may retain the tenants' security deposit of \$550 against the amount owed for the October rent. I further find that the landlords are entitled to recover the filing fee for this proceeding from the tenants.

Therefore, I find that the landlords are entitled to a Monetary Order calculated as follows:

:Loss of rent for October 2009	\$1,100.00
Filing fee	50.00
Sub total	\$1,150.00
Less retained security deposit	- 550.00
<b>Balance due to landlords</b>	<b>\$ 600.00</b>

### **Conclusion**

In addition to authorization to retain the security deposit in set off, the landlords' copy of this decision is accompanied by a Monetary Order for \$600.00, enforceable through the Provincial Court of British Columbia, for service on the tenants.

January 19, 2010.