

## **DECISION**

Dispute Codes MNSD, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant for a monetary order for return of double the security deposit, for compensation under the Act or Tenancy Agreement, and for recovery of the filing fee for the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Is the Tenant entitled to financial compensation from the Landlord?

### Background and Evidence

In July of 2009, the Tenant was looking for a rental unit in Vancouver to move to from his residence in the Yukon. The Tenant is a student.

Using the Internet and email, the Landlord presented photographs and the details regarding the rental unit to the Tenant. The subject rental unit is a basement suite. The Tenant was pleased with the rental unit as it had a large window and the Landlord would accept the Tenant's pet dog.

The parties entered into a written tenancy agreement on August 1, 2009, with the parties agreeing the monthly rent would be \$800.00.

The Tenant paid a security deposit of \$400.00 and a pet damage deposit of \$400.00 on August 4, 2009.

The Tenant provided the Landlord with two months of pre-paid rent, in the amount of \$1,600.00, for August and September of 2009.

According to the evidence of the Tenant, he phoned the Landlord at the end of August, prior to travelling to Vancouver, to make arrangements for the key and to confirm the rental unit. The Landlord confirmed the arrangements and requested that the Tenant call him the day before he arrived in Vancouver.

The Tenant phoned the Landlord on the day before he arrived, on or about September 3, 2009, and the Landlord informed him he had rented the subject rental unit to a taller student, but had reserved an alternate rental unit in the basement for the Tenant. The Tenant was surprised and upset with this.

When he arrived at the subject rental unit the next day, it was occupied by the different student the Landlord had rented to. The Tenant claims the alternate room offered to him was smaller, darker and had a lower ceiling. There was a window in the alternate room, however, it was blocked by exterior bushes. In the opinion of the student the subject rental unit was much better than the alternate unit offered by the Landlord.

The Tenant did not move into the rental unit or the alternate room. He went to a hotel that night and spent the rest of the month in temporary accommodations. He submits that the Landlord misrepresented the rental unit to him and he was entitled to rescind the tenancy agreement.

On September 12, 2009, the Tenant provided the Landlord with a written notice of the forwarding address to return the deposits to and did not sign over a portion of the security deposit.

The Tenant claims \$1,600.00 for two months rent, \$1,600.00 for double the security and pet deposits, \$154.10 for hotel costs, \$125.75 for increased costs for temporary accommodations and refund of the \$50.00 filing fee for the Application.

The Landlord testified that following his agreement with the Tenant, he was showing the rental units in his basement to the parents of another student. The parents felt that the subject rental unit would be more appropriate for their son because it had higher ceilings and their son was tall. The Landlord rented the subject rental unit to this third party.

The Landlord testified he had only one picture of the basement rental units and this was of the subject rental unit. The Landlord testified he did not think it would be a problem for the Tenant to take the alternate rental unit. The Landlord testified he had been very reasonable to allow the Tenant to rent from him due to the Tenant having a pet dog. He

did not think there was much difference between the subject rental unit and the alternate unit.

The Landlord testified that he could have provided a different rental unit to the Tenant, consisting of the living room area of the basement, had he been given the chance. He testified he kept the rent and deposits because he felt the Tenant had breached the tenancy agreement and he was entitled to the rents.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the Landlord has breached the tenancy agreement and the Act by failing to provide the rental unit the parties agreed upon. I find that the selection of the subject rental unit was a material term of the tenancy agreement and the Landlord has breached this material term. I find that the Landlord misrepresented the rental unit to the Tenant and he was negligent to rent the subject rental unit out to another person.

I find the Tenant was entitled to rescind the tenancy agreement. I find the agreement was voided first by the Landlord's actions in renting the subject rental unit to a different renter. I further find the Landlord took rent money in advance, which was a breach of the Act.

I find that the Tenant mitigated his losses as required under the Act, and that his monetary claims are reasonable and would have been foreseeable to a reasonable person.

I find the Landlord is not entitled to any rent payments in this situation. The rent for August 2009, was paid to the Landlord to hold the subject rental unit, as the Tenant was not residing there. In fact the Landlord did not hold the unit, and therefore, I find the Tenant is entitled to a return of all rents paid to the Landlord.

I also find the Landlord has breached section 38 of the Act by failing to return the deposits to the Tenant or file a claim against them within 15 days of the end of the tenancy, or receipt of the Tenant's forwarding address.

Having made the above findings, I must Order, pursuant to sections 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$3,529.85**, comprised of double the pet damage and security deposits (2 x \$800.00), \$1,600.00 for rents paid, \$154.10 for hotel costs, \$125.75 for increased costs of accommodations and the \$50.00 fee for filing this Application.

The Tenant is given a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible.

Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Lastly, I found during the course of the hearing that the Landlord was not aware of many portions of the Act. Therefore, I have enclosed a copy of a guidebook for his use.

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: May 11, 2010.

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Dispute Resolution Officer