

## **DECISION**

Dispute Codes:

**MNDC, MNSD, FF**

### Introduction

This was a cross-Application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for compensation for loss of rent revenue, 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.

The tenant made Application requesting return of the deposit paid and compensation for damage or loss.

The landlord provided affirmed testimony that on April 6, 2010, she and her husband attended at the tenant's home and that her husband personally handed the tenant the hearing package. The female landlord was present in the hall when the tenant received the package.

These documents are deemed to have been sufficiently served in accordance with section 89 of the *Act*; however the Tenant did not appear at the hearing.

The landlord's evidence was served to the tenant via regular mail. The landlord evidence package was sent to the tenant's new mailing address. The tenant submitted a response to the evidence.

The landlord confirmed receipt of Notice of the tenant's Application and hearing scheduled to be heard at this time.

### Preliminary Matter

As the tenant failed to attend this hearing in support of her Application, I find that the tenant's Application is dismissed.

The landlord amended their Application to reduce the claim by \$350.00, as they have been paid January 2010, rent owed.

### Issue(s) to be Decided

Is the landlord entitled to compensation for damage or loss under the Act?

May the landlord retain the deposit?

Is the landlord entitled to filing fee costs?

### Background and Evidence

On December 18, 2009, the parties reached an agreement that the tenant would rent a room in a house for the sum of \$350.00 per month, due on the first day of the month. On December 18, 2009 the tenant paid the first month's rent owed.

On December 21, 2009, the tenant paid the property owner a deposit in the sum of \$175.00.

On January 1, 2010, the tenant wrote a letter, which the landlord received on January 2, 2010, giving the landlord notice that the tenant was no going to rent the room. A copy of this letter was submitted as evidence by the tenant. The tenant rescinded her agreement to rent as she discovered that a room in the house had been sprayed for bed bugs.

On December 28, 2009 the landlord had turned away a renter who wanted the room for 6 months. After the tenant gave the landlord her letter dated January 1, the landlord called the local newspaper on Monday, the next business day. Advertisements were placed for the next 3.5 weeks. The landlord also used a number of popular web sites in attempts to locate a new tenant.

The landlord explained that the rental unit is a small room and can be difficult to rent. The first 2 potential candidates who responded to the ads did not have good references. The landlord did locate a new tenant for March 1, 2010.

The landlord is claiming loss of February rent revenue in the sum of \$350.00.

### Analysis

Section 16 of the Act determines that the rights and obligations under a tenancy commences at the point at which the parties enter into the tenancy agreement, whether or not the tenant ever occupies the rental unit.

I find that the parties entered into a binding tenancy agreement on December 18, 2009, for the rent of a room effective January 1, 2010 in the sum of \$350.00 due on the first day of each month. Therefore, the landlord was entitled to rent paid for January.

Section 45(1) of the Act provides:

**45** (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.*

As rent was due on the first day of the month, any notice given by the tenant between January 1 and 31, 2010, would be effective on February 28, 2010. If the tenant had wanted to give notice effective January 31, 2010, she was required to provide written notice to the landlord prior to January 1, 2010.

If the tenant believed that the landlord was in breach of the Act, the tenant had a right to seek a remedy, either via mutual agreement with the landlord, or via the dispute resolution process. As the tenant moved out based on notice given on January 1 or 2, 2010; that notice, according to section 45 of the Act, was effective February 28, 2010.

Section 7 of the Act requires parties to minimize any loss that they claim. In this case I have considered the landlord's testimony that efforts were made to locate new tenants as quickly as possible. I find that the landlord's efforts via newspaper ads and web sites demonstrated an attempt to locate a new tenant as quickly as possible and that the landlord is entitled to loss of February, 2010, rent revenue in the sum of \$350.00. I also base this decision on the tenant's failure to give notice as required by the Act.

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

I find that the landlord is entitled to retain the tenant's security deposit, in the amount of \$175.00, in partial satisfaction of the monetary claim.

The tenant's evidence indicates that the landlord is not entitled to retain the deposit as condition inspections were not completed. Section 24(2) of the Act prohibits a landlord from claiming against the deposit if the inspections are not completed, however this prohibition refers to damages to the rental unit and not to claims for damages or loss under the Act.

## Conclusion

I find that the landlord has established a monetary claim, in the amount of \$400.00, which is comprised of \$350.00 loss of February, 2010 rent revenue 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 \$175.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$225.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The tenant's Application is dismissed.

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: June 10, 2010.

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Dispute Resolution Officer