

## **DECISION**

### **Dispute Codes:**

MNDC, MNSD; FF

### **Introduction**

This is the Landlords' application for a Monetary Order for compensation for loss of rent; to retain the security deposit in partial satisfaction of its monetary claim; and to recover the cost of the filing fee from the Tenants.

It is important to note that there were no documents on the Residential Tenancy case file. The Landlord was adamant that she provided her evidence to the Residential Tenancy Branch when she filed her Application for Dispute Resolution. The Landlord was invited to provide her evidence orally. Both parties gave affirmed testimony at the Hearing.

The Landlord testified that she sent the Notice of Hearing documents, together with copies of her evidence, to the Tenants by courier on September 11, 2010. The Landlord testified that she sent the documents to the address the Tenants provided to her when they applied to rent the rental unit. The Tenants testified that they received the Notice of Hearing documents, but did not get any copies of the Landlord's evidence.

### **Issues to be Decided**

- Are the Landlords entitled to loss of rent for the month of September, 2010?

### **Background and Evidence**

The parties agreed on the following facts:

- The Tenants met with the Landlord on August 15, 2010 to view the rental unit;

- The Tenants paid the Landlord a security deposit in the amount of \$1,300.00 on August 15, 2010. The Landlord gave the Tenants a receipt for security deposit.
- The Tenants did not move into the rental unit.

The Landlord gave the following testimony:

The Landlord testified that the Tenants had seen the rental unit several times before providing a security deposit on August 15, 2010. The tenancy was to begin on September 1, 2010, with a monthly rent of \$2,600.00 plus utilities. The Tenants were supposed to rent the whole house. On August 16 or 17, the male Tenant advised the Landlords that he had not given his current landlord sufficient notice. On August 28, the Tenants were supposed to meet at the rental unit with the Landlord to sign the tenancy agreement, pay rent for September and pick up the keys. The Tenants did not show up.

The Landlord testified that she moved the washer and drier upstairs at the Tenants' request. The Landlord stated that everything was ready for the Tenants to move in on August 25, 2010.

On September 10, 2010, the Landlord advised the Tenants that she could not wait any longer and would have to rent the rental unit to someone else because she was losing rent.

The male Tenant gave the following testimony:

The Tenant acknowledged that he had not given sufficient notice to his landlord, but testified that he was prepared to pay rent for both places for the month of September. He testified that there were ongoing projects at the rental unit and that he was concerned the repairs were not going to be completed by September 1, 2010. The Tenant denied asking the Landlord to move the washer and drier upstairs and stated that the Landlord told him that she wanted to keep a portion of the basement for her own use. The Tenant testified that the Landlords refused to speak to him a week before

the tenancy was to begin and that on September 1, 2010, the Landlords told him they didn't want to rent the house to him.

### **Analysis**

The Act defines a tenancy agreement as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. The Act defines a security deposit as money paid by a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting a rental unit

Based on the testimony of both parties, and on the balance of probabilities, I find that the parties entered into an oral tenancy agreement on August 15, 2010, when the Tenants provided the Landlord with a security deposit in the amount of \$1,300.00. I accept both parties' testimony that the tenancy was to begin on September 1, 2010 and that monthly rent was \$2,600.00.

The Tenants did not move into the rental unit on September 1, 2010. The Tenants were entitled to move in on September 1, 2010. The Tenants would have had their own remedy should the Landlords have failed to meet their obligations under the tenancy agreement.

Therefore I find that the Landlords have established a monetary claim for loss of rent for the month of September, 2010, in the amount of \$2,600.00.

Pursuant to Section 72(2)(b) of the Act, the Landlords may apply the security deposit towards partial satisfaction of their monetary award. No interest has accrued on the security deposit.

The Landlords have been successful in their application and are entitled to recover the cost of the \$50.00 filing fee from the Tenants.

I hereby provide the Landlords with a Monetary Order, calculated as follows:

Loss of rent	\$2,600.00
Recovery of the filing fee	\$50.00
Subtotal	\$2,650.00
Less security deposit	-\$1,300.00
TOTAL AMOUNT DUE TO THE LANDLORDS AFTER SET-OFF	\$1,350.00

### **Conclusion**

I hereby provide the Landlords with a Monetary Order in the amount of \$1,350.00 against the Tenants. This Order must be served on the Tenants and may be filed in the Provincial Court of British Columbia (Small Claims) 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: January 18, 2011.

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