



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenants have made application for a monetary Order for return of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process.

Background and Evidence

The parties agreed that the tenancy was to commence on November 15, 2010, that rent was \$950.00 per month and that the tenants paid the landlord \$950.00 for first month's rent and an additional \$950.00 as last month's rent.

On October 23, 2010, the tenants informed the landlord they would not move into the unit.

Sometime in December, 2010, the tenants sent the landlord a written forwarding address, via registered mail, requesting return of the deposit. The tenants did not submit the details of this mail as evidence and could not recall the date the mail was sent.

The tenants have requested return of the \$1,900.00 given to the landlord.

The landlord stated that the tenants were to remain in the unit for the whole ski season and that he suffered a loss of revenue as a result of the tenant's failure to move into the unit. The tenants submitted that they had planned to stay for the ski season, but were not under the impression any penalty would be paid if they decided to move.

Analysis

In the absence of a written tenancy agreement, during the hearing I found that this was a month to month tenancy; that the landlord was given notice on October 23, 2010, that the tenants would not move in, and that the tenants are not entitled to return of rent paid for November as they had entered into a rental agreement that required them to pay rent.

Section 45 of the Act requires the tenants to give one month's written Notice ending their tenancy; therefore, the notice given in October was effective December 14, 2010. Further, the landlord always had possession of the unit as the tenants did not move into the home and were never given keys.

I note that the \$950.00 paid as last month's rent was a deposit which exceeded the amount allowed under the Act, by \$475.00.

Mutually Settled Agreement

The parties agreed that the landlord will retain the first month's rent in the sum of \$950.00 and that the tenants are entitled to return of the \$950.00 deposit.

The parties agreed that a monetary Order will be issued to the tenants, in the sum of \$950.00.

Conclusion

Based on the mutual agreement of the parties I grant the tenants a monetary Order for \$950.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court 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: March 10, 2011.

Residential Tenancy Branch