

## **DECISION**

**Dispute Codes**      MNDC and, FF

### **Introduction**

This application was brought by the landlords on March 11, 2011 seeking a Monetary Order for loss or damage under the rental agreement or legislation, specifically one month's loss of rent on the grounds that the tenants failed to complete vacant possession until several days later than the agreed end of tenancy date.

### **Issue(s) to be Decided**

This matter requires a decision as to whether the landlord is entitled to a monetary award for loss of rent as claimed.

### **Background and Evidence**

The conclusion of this tenancy has already been the subject of two previous hearings resulting from applications by both parties.

In the first, on September 22, 2010, the parties arrived at a consent agreement in which they agreed that the tenants would vacate the rental unit on September 30, 2011. Other matters in the application were dismissed without leave to reapply.

In a second hearing, held on March 2, 2011, the tenants were awarded return of their security deposit in double under section 38(6) of the *Act* and the landlord was granted an award for damage to the rental unit. When accounts were balance, the tenants were granted a Monetary Order for \$1,080.40. The Order has been filed with the Provincial Court of British Columbia but had not been paid at the time of the hearing. The landlords subsequently applied for a Review Hearing which was denied.

In the present application, the landlords seek a monetary award on the grounds that the tenants lingered for some time after the September 30, 2010 end date of the tenancy and the last key was not returned under October 20, 2010.

I note that the landlords' application for the hearing conducted on March 2, 2011 was made on November 1, 2010.

### **Analysis**

While the doctrine of *Res Judicata* is most commonly used to limit applications in civil proceedings to being heard only once, it also holds that a party cannot bring an application for a matter that ought to have been included in a previous application.

I find that when the landlords brought their previous application on November 1, 2010, they were fully aware of the circumstances of the present application and ought to have brought the present claims to the previous hearing.

For that reason, the present application is dismissed without leave to reapply.

### **Amending Agreement**

However, as a matter of record, after hearing that determination, the tenants agreed that they would be satisfied to simply receive return of their initial security deposit of \$725 in settlement of the outstanding Monetary Order in their favour for \$1,080.40.

The landlord made promise to pay the \$725 to them forthwith.

The tenants made promise that, on receipt of the \$725, they would consider the Monetary Order of March 2, 2011 to be fully satisfied; they would take no further action to enforce the Order and would acknowledge that it had been satisfied.

**Conclusion**

The application is dismissed without leave to reapply and the parties' agreement with respect to satisfaction of the existing Monetary Order has been recorded.

Dated: June 24, 2011.

---