



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, (MNSD), FF

### Introduction

This matter dealt with an application by the Landlords for compensation for a loss of rental income and to recover the filing fee for this proceeding. At the beginning of the hearing, the Landlords sought to amend their application by including a claim to keep the Tenants' security deposit. I allowed the Landlords' request for the reasons set out below in the Analysis section of this Decision.

The Landlords said they served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on June 10, 2011. The Landlords said that according to the Canada Post online tracking system, the Tenants received the hearing packages on June 13, 2011. Based on the evidence of the Landlords, I find that the Tenants were served with the Landlords' hearing packages as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

### Issue(s) to be Decided

1. Are the Landlords entitled to compensation for a loss of rental income?
2. Are the Landlords entitled to keep the Tenants' security deposit?

### Background and Evidence

This month-to-month tenancy started on April 15, 2011 and ended on May 6, 2011 when the Tenants moved out. Rent was \$750.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$375.00 at the beginning of the tenancy.

The Landlord (J.D.) said that on May 20, 2011, she found a letter dated May 6, 2011 from the Tenants in the rental unit. The letter stated that the Tenants had moved out "due to unforeseen circumstances." The Landlord said she has a continuous advertisement running in a local newspaper for suites in the rental property but has been unable to re-rent the rental unit to date. Consequently, the Landlords sought compensation for a loss of rental income for June 2011.

### Analysis

Section 45(1) of the Act says that a Tenant of a month-to-month tenancy must give the Landlord one full, calendar month's notice in writing that they will be ending a tenancy. Section 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income.

I find that the earliest date the Tenants' notice dated May 6, 2011 could have taken effect would have been June 30, 2011. In the absence of any evidence from the Tenants to the contrary, I also find that the Landlords have taken reasonable steps to try to re-rent the rental unit but have been unable to do so. Consequently, I find that the Landlords are entitled to be compensated for a loss of rental income for June 2011 in the amount of \$750.00.

Section 36 of the Act says that a Tenant's right to the return of a security deposit is extinguished if the Tenant abandons the rental unit or fails to participate in a move out inspection (after being given the required opportunities to do so). The Landlord said that the Tenants did not leave a forwarding address so on June 15, 2011 she sent the Tenants a Notice of Final Opportunity to Schedule a Condition Inspection for June 30, 2011 to their previous address however they did not request a different time and did not attend. The Landlord said this was the same address to which she had sent the hearing packages which were received by the Tenants. Consequently, the Landlord argued that the Tenants failed or refused to participate in a move out inspection.

Based on the evidence of the Landlords, I find that the Tenants failed to participate in a move out inspection after being given a reasonable opportunity to do so and as a result, I find that their right to the return of the security deposit has been extinguished under s. 36 of the Act. Accordingly, I grant the Landlords' request to amend their application to keep the security deposit.

I also find that the Landlords are entitled pursuant to s. 72(1) of the Act to recover from the Tenants, the \$50.00 filing fee they paid for this proceeding. I Order the Landlords pursuant to s. 38(4) of the Act to keep the Tenants' security deposit in partial payment of the monetary award in this matter. The Landlords will receive a Monetary Order for the balance owing as follows:

Loss of rental income for June 2011:	\$750.00
Filing Fee:	\$50.00
Subtotal:	\$800.00
Less: Security Deposit:	(\$375.00)
Accrued Interest:	(\$0.00)
Balance Owing:	\$425.00

Conclusion

A Monetary Order in the amount of **\$425.00** has been issued to the Landlords and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: August 17, 2011.

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Residential Tenancy Branch