

## **DECISION**

**Dispute Codes:** MNSD, MNDC and FF

### **Introduction**

This application was brought by the tenant on June 23, 2011 seeking return of one month's rent, his security deposit and recovery of the filing fee for this proceeding after the after a fixed term tenancy agreement did not proceed.

As a matter of note, the written rental agreement is between the tenant and the landlord in person yet the tenant has named a corporate entity as a co-respondent. While the landlord stated that he is the principal of the named corporation, it is not an owner of the rental building. Therefore, I have amended the tenant's application accordingly.

As a further note, while the tenant stated that he had not received the landlord's evidence package, the landlord submitted proof of service from Canada Post showing that the package had been sent on September 13, 2011. The tenant stated he had not been able to pick it up as he had been out of the country.

### **Issues to be Decided**

This application requires a decision on whether the tenant is entitled to a monetary award for return of one month's rent, security deposit and filing fee.

### **Background and Evidence**

The tenant and the landlord's agent signed a six-month fixed term rental agreement on June 24, 2009, accepted by the landlord the following day. The tenant paid \$800 rent for July 2009 and a \$400 security deposit.

While the tenancy began on July 1, 2009, the tenant had advised that he would not be taking full occupancy unit August 1, 2010

The rental unit had required some minor work including repair of a running toilet, installation of closet doors, lighting repairs, window coverings, etc. The parties concur that they had agreed the work would be completed prior to occupancy but disagree on some details.

The landlord submitted a letter dated July 9, 2009 from the tenant stating that he had come by the rental unit, acknowledged a note from the landlord regarding notice of a repair and stated, "There's no great rush to fix toilet or blinds....I'm going to measure windows for screens & check out costs.'

The tenant, a shift worker, subsequently became apprehensive that the work would not complete on time and telephoned the landlord on July 15, 2009.

The parties concur that the call took place at 2 a.m. to the landlord at his home.

During that conversation, the parties agreed not to proceed with the tenancy. The tenant stated that the landlord promised to return the security deposit and the rent for July 2009. The landlord indicated that he sensed the tenancy would not be a mutually beneficial arrangement and that had simply agreed not to hold the tenant to the fixed term.

The parties concur that the landlord had offered to return the security deposit, but the tenant declined insisting on return of the rent and deposit. The landlord submitted a copy of the cheque dated August 15, 2009 into evidence.

## **Analysis**

A fixed term rental agreement is a binding contract that cannot be broken unilaterally but either party.

In the present matter, I find that the parties mutually agreed to end the tenancy on July 31, 2009, but that the tenant was responsible for the rent for July 2009.

Therefore, the tenant's application for return of the rent is dismissed without leave to reapply.

The landlord agrees that the security deposit is due to the tenant, that he kept the cheque for 18 months, and that he is prepared to issue another.

Accordingly, I will provide the tenant with a Monetary Order for \$400.

As the tenant's claim on the rent is dismissed and as the security deposit was available to the tenant without this hearing, I decline to award the filing fee.

### **Conclusion**

The tenant's copy of this decision is accompanied by a Monetary Order for **\$400.00**, enforceable through the Provincial Court of British Columbia, for service on the landlord.

September 26, 2011