



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Landlord's application filed March 11, 2011: MNR; MNSD; FF

Tenants' application filed June 28, 2011: MNDC; FF

### **Introduction**

This Hearing was convened to consider cross applications. These matters were originally to be heard on July 22, 2011, but the Tenants' file was not available to me at the scheduled time for the Hearing. Therefore, both matters were adjourned to August 31, 2011.

The Landlord seeks a Monetary Order for unpaid rent; to apply the security deposit towards partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenants.

The Tenants seek return of a deposit paid to the Landlord; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

It was determined that the parties had exchanged copies of their documentary evidence.

### **Issues to be Decided**

1. Was there a tenancy agreement between the parties?
2. Disposition of the deposit the Tenants paid to the Landlord.

### **Background and Evidence**

The Landlord provided the following testimony:

The Landlord testified that on February 26, 2011, the Tenants agreed to rent the rental unit on a month-to-month basis for \$1,225.00 a month, and that the female Tenant signed a tenancy agreement. He stated that the Tenants paid a security deposit in the amount of \$612.50 on February 26, 2011. The Landlord stated that the tenancy was to begin on March 23, 2011. The Landlord stated that he could not recall for certain, but

believed that he had agreed that the Tenants would not have to pay pro-rated rent for the month of March.

The Landlord testified that the Tenants called him on February 27, 2011, and told him that they were no longer interested in renting the rental unit because they had found something else. The Landlord testified that he asked the Tenants to give him written notice that they would not be moving into the rental unit, but that they did not.

The Landlord testified that he had turned down other prospective tenants after the Tenants agreed to rent the rental unit. He stated that he immediately called some of those prospective tenants in an attempt to re-rent it to someone else, but without success.

The Landlord testified that on or about February 28, 2011, he placed an ad on a popular on-line site, indicating that the rental unit was for rent, was being renovated, and was available for April 1, 2011, but that an early move-in date could be accommodated. The Landlord re-rented the suite effective May 1, 2011.

The Landlord seeks loss of rent for the month of April, 2011, and pro-rated rent for 6 days in March, for a total monetary claim of \$1,470.00.

The Tenants provided the following testimony:

The Tenants testified that when they first viewed the rental unit on February 26, 2011, there were other people looking at it. The Tenants stated that they liked the location and were interested, but had other suites to look at. The Tenants testified that the Landlord accepted the deposit as a "holding fee" which meant that they had first priority to rent the suite, and that the Landlord told them that he would not deposit it if they found something else more suitable. The Tenants testified that they called the Landlord within 30 hours to say they had found something else, but the Landlord had already deposited their cheque. The Tenants seek to recover the "holding fee" from the Landlord.

The Tenants agreed that the female Tenant signed the agreement in the male Tenant's absence, but submit that it was not a tenancy agreement. The Tenants testified that the paragraph regarding the security deposit was not filled in or the paragraph with respect to pets. The female Tenant stated that she believed it would not become a legal tenancy agreement until the male Tenant had signed it.

The Tenants submitted that the Landlord's ad on the web site indicated that the rental unit was being renovated and therefore would not be available for rent until April 1,

2011. The Tenants submitted that the Landlord did not attempt to rent it in a timely fashion after the Tenants told him they would not be moving in.

The Landlord provided the following reply:

The Landlord stated that he did not tell the Tenants he would not deposit the cheque if they found something else. He stated that he told the Tenants if their references did not check out, he would return the cheque.

### **Analysis**

The Landlord provided a copy of the "Lease Agreement" in evidence. The female Tenant signed the agreement on February 26, 2011. The Landlord signed the agreement on February 27, 2011. The Landlord also provided a copy of the "Application" to rent the rental unit, which was signed by the male Tenant on February 26, 2011. The "Application" authorizes the Landlord to have the Tenant's "credit report and references checked".

The Landlord did not provide a copy of the on-line ad he posted seeking new tenants. The Landlord did not provide evidence that he performed a credit or reference checks on the Tenants.

Generally at the beginning of the renting process, a landlord will meet with prospective tenants to complete an application to rent. The landlord then makes credit and reference checks, and if satisfied, meets with the prospective tenants to enter into a tenancy agreement. In this situation, by his own admission, the Landlord advised the Tenants that he would return their deposit if their references did not check out. I find that the Landlord cannot rely on a tenancy agreement that he has not yet perfected. I find that the parties did not have a tenancy agreement and therefore the Landlord's application for loss of revenue and to set off the deposit in partial satisfaction of his award, is dismissed. The Landlord has not been successful in his claim and is not entitled to recover the cost of the filing fee from the Tenants.

I order the Landlord to return the deposit to the Tenants forthwith. The Tenants have been successful in their application and are entitled to recover the cost of the filing fee from the Landlord.

### **Conclusion**

I hereby provide the Tenants a Monetary Order in the amount of **\$662.50** for service upon the Landlord. This Order may be filed in the Provincial Court 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: September 1, 2011.

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Residential Tenancy Branch