



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Tenant   MNDC, MNSD, FF  
                                 Landlord   MNDC, MNSD, FF

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking to retain moneys paid as compensation for damage or loss under the Act, the regulations or the tenancy agreement, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenants filed seeking a monetary order for compensation for damage or loss under the Act, the regulations or the tenancy agreement, for the return of the Tenants' security deposit and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenants were done by registered mail on January 10, 2012, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlord were done by registered mail on December 29, 2011, in accordance with section 89 of the Act. The Tenant said the registered mail package sent to the Landlord was returned unclaimed. The address on the envelope was checked with the Landlord and it was the Landlord's address.

### Issues to be Decided

Landlord:

1. Are there damages or losses to the Landlords and if so how much?
2. Is the Landlord entitled to compensation for damage or loss and if so how much?
3. Is the Landlord entitled to retain the Tenant's security deposit?

Tenant:

1. Are there damages or losses to the Tenants and if so how much?
2. Are the Tenants entitled to compensation for loss or damage and if so how much?
3. Are the Tenants entitled to the return of the security deposit?

## Background and Evidence

This tenancy agreement was to start on December 15, 2011 as a month to month tenancy. The Tenants said they did not move in to the rental unit because they said the Landlord said they had to pay the water and garbage utilities. This made the cost of the rental unit more than they wanted to pay. Rent was \$1,300.00 per month payable on the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$650.00 on November 25, 2011.

The Tenants said the Landlord told them in a phone conversation on December 7, 2011 that he wanted to change the Tenancy Agreement to exclude garage from what was included in the rent. The Tenants said they were not comfortable with changing the tenancy agreement and they believe they made a mutual agreement to end the tenancy with the Landlord over the phone. The Tenant said they did not put the mutual agreement to end tenancy in writing.

The Tenant said that they have applied to recover their security deposit of \$650.00 and the ½ month rent of \$650.00 that they paid in cash on November 25, 2011 because the Landlord agreed to end the tenancy before it began.

The Landlord said he did not tell the Tenants he wanted to change the tenancy agreement. The Landlord continued to say the Tenants changed their mind on December 7, 2011 and they were not going to move in to the rental unit on December 15, 2011 the start date of the tenancy agreement. The Landlord said the Tenants are still responsible for the rent for the first month even though they did not move in. The Landlord said he has collected the rent for December 15, 2011 to December 31, 2011 and he has the Tenant's security deposit of \$650.00 in his position. As well the Landlord said he rented the unit on January 1, 2012 to new tenants.

In the Tenants closing remarks by saying the Landlord asked to change the tenancy agreement by excluding the garbage collection from the rent or by increasing the rent by \$100.00. The Tenants did not agree to this so they thought they had made a mutual agreement to end the tenancy with the Landlord but it was not in writing. As a result the Tenants requested the return of their security deposit and the rent they paid because they did not move into the rental unit.

The Landlord said in his closing remarks that the Tenants changed their minds about moving into the rental unit because he thought they could not afford the unit. The

Landlord said he did not change the tenancy agreement and he said the Tenants should be responsible for the rent for December, 2011.

## Analysis

Section 16 of the Act says the rights and obligations of tenancy agreement take effect when the agreement is entered into whether or not the tenant ever occupies the rental unit. Consequently the tenancy agreement dated November 24, 2011 is valid and in full effect.

Section 45 of the Act says a Tenant may end a period tenancy not earlier than one month after the Landlord receives proper notice and the notice is give on the day before the day rent is normally due. In this case the Tenants did not give proper written notice to end the tenancy and a Mutual Agreement to End Tenancy was not in writing; therefore it has not been proven that an end to the tenancy was agreed to by both the Landlord and the Tenant. As a result the tenancy was in full effect and I find the Tenants are responsible for the December, 2011 rent which they have paid in the amount of \$650.00.

Section 7(2) of the Act says a Landlord has to try to mitigate or minimize any loss or damage that they may be incurring and the Landlord in this case has complied with the Act as he rented the unit to new tenants as soon as he could. The new tenants moved into the rental unit on January 1, 2012 therefore the Landlord minimized his possible rental loss from the original Tenants. Consequently the Tenants are only responsible for the rent from December 15, 2011 to December 31, 2011 in the amount of \$650.00 which the Tenants have paid.

As the Landlord's application is for damage or loss due to loss of rent or the potential loss of rent and the Landlord has been mitigated this as the rent for December has been paid by the Tenants and the rent for January has been paid by the new tenants; therefore the Landlord has no further loss from unpaid rent. Consequently the Landlord's claim to retain the Tenants' security deposit for loss rental is dismissed without leave to reapply. Further, I find that the Tenants claim for the return of the security deposit has merit as the security deposit is not needed for unpaid rent and the Landlord has not claimed any damage to the unit as the Tenants did not move in. Consequently I find for the Tenants and I have issued a monetary order for the full amount of the security deposit in the amount of \$650.00.

In regards to the Tenants claim for the return of the \$650.00 rent they paid for December, 2012. I find the Tenants are responsible for the rent from December 15,



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2011 to December 31, 2011 in the amount of \$650.00 as the Tenancy Agreement was in effect; therefore I dismiss their claim for rent recovery in the amount of \$650.00 without leave to reapply.

As the Tenants and the Landlord were both only partially successful in these matters, I order both parties to bear the \$50.00 filing fee for these proceedings that they have already paid

## Conclusion

The Tenants' application to recover their security deposit of \$650.00 is granted and a Monetary Order in the amount of \$650.00 has been issued to the Tenants. A copy of the Order must be served on the Landlord: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Landlord is ordered to retain the \$650.00 of rent paid by the Tenants for December 15, 2011 to December 31, 2011.

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*.

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Residential Tenancy Branch