



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Landlord: MNR, MNDC, MNSD and FF  
Tenant: MNSD and FF

### **Introduction**

This hearing was convened on applications by both the landlord and the tenant.

By application received March 13, 2012, the landlords sought a Monetary Order for loss of rent on the grounds that the tenants breached the fixed term rental agreement by leaving early. The landlord also sought to recover of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

By application of March 22, 2012, the tenants sought return of their security deposit and recovery of the filing fee for this proceeding.

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

The landlords' application requires a decision on whether the landlords are entitled to a Monetary Order for the claims submitted, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off.

The tenants' application requires a decision on whether the tenants are entitled to return of all or part of the security deposit if it has not been awarded on the landlords application.

### **Background and Evidence**

This tenancy began on April 1, 2011 under a fixed term rental agreement set to end on March 31, 2012. The landlord submitted only one of the eight pages of the rental agreement into evidence, but the tenants concurred that they had signed it as claimed.

Rent was \$2, 150 per month and the landlords hold a security deposit of \$1,075 paid at the beginning of the tenancy.

During the hearing, the landlord's agent gave evidence that he had learned by a telephone call in mi-October that the tenants were vacating the rental unit at the end of October 2011 which they did.

The tenants stated that they had asked their daughter to mail notice to the landlord on October 1, 2012 and stated that they were forced to vacate the rental unit due to an offensive odour emanating from the kitchen cupboards, a complaint they said was not rectified despite several telephone requests to do so. The tenants submitted no corroborating evidence of the claimed odours.

The landlords' agent said he had not received such calls and submitted into evidence a copy of an MLS listing showing that the tenants had purchased their own home in August of 2011 and the tenants concurred that they had done so, taking possession in November 2011.

The landlord's agent stated that he had attempted to find new tenants, but was unable to initiate a new tenancy until January 23, 2012. He submitted no documentary evidence of the advertisements.

### Analysis

Section 45 of the *Act* provides that tenants in a fixed term rental agreement cannot give notice to end the tenancy on any date that is earlier than the end of tenancy date set by the rental agreement which was March 31, 2012. Even if the tenancy had been on a month to month agreement, notice must be received by the landlord before the next rent due date if it is to take effect at the end of the following rental period.

Section 7 of the *Act* provides that if one party to a rental agreement suffers a loss due to the other's non-compliance with the rental agreement or legislation, then the non-compliant party must compensate them for the loss.

By that provision, I find that the tenants are responsible for the landlord's loss.

However, section 7 of the *Act* requires that a party making such a claim must do whatever is reasonable to minimize their loss. In the present matter, such reasonable action could have been proven by copies of advertisements provided by the landlord.

In the absence of such proof, I cannot find that the landlord did whatever is reasonable to minimize the loss.

Therefore, I find that the tenants are responsible for the full rent for November 2011 and for one-half of the rent or loss of rent for December, 2011, and amount totalling (2,150 + \$1,075) = \$3,225.

Having found substantial merit in the landlords' application, I further find that they are entitled to recover his filing fee for this proceeding from the tenants.

In addition, as authorized under section 72 of the *Act*, I hereby order that the landlord shall retain the security deposit in set off against the balance owed.

Thus, I find that the tenants owe to the landlords an amount calculated as follows:

|  |                   |
|--|-------------------|
| Rent for November 2011                           | \$2,150.00        |
| Filing fee                                       | <u>100.00</u>     |
| Sub total  | \$3,325.00        |
| Less retained security deposit (No interest due) | - <u>1,075.00</u> |
| <b>TOTAL</b>                                     | <b>\$2,250.00</b> |

### Conclusion

In addition to authorization to retain the security deposit and interest in set off, the landlord's copy of this decision is accompanied by a Monetary Order for **\$2,250.00**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

The tenant's claim for return of the security deposit is dismissed without leave to reapply.

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: May 16, 2012.

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Residential Tenancy Branch