



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

For the tenant: MNSD, FF

For the landlord: MNSD, MND, MNDC, MNR, FF

### **Introduction**

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”).

The tenant applied for a return of her security deposit, doubled, and for recovery of the filing fee.

The landlords applied for authority to retain the tenant’s security deposit, a monetary order for unpaid rent, damage to the rental unit and for money owed or compensation for damage or loss and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary relevant evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

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

1. Is the tenant entitled to a monetary order comprised of double her security deposit and to recover the filing fee?

2. Are the landlords entitled to retain the tenant's security deposit, for further monetary compensation, and to recover the filing fee?

### Background and Evidence

The undisputed evidence of the parties shows that this one year, fixed term tenancy began on August 1, 2012, actually ended the last week of April 2013, when the tenant vacated the rental unit, monthly rent was \$1700, plus \$170 for utilities, and that the tenant paid a security deposit of \$850 at the beginning of the tenancy.

The parties agreed that there is no move-in or move-out condition inspection report as required by the Residential Tenancy Act and that the landlord has not returned any portion of the tenant's security deposit.

#### *Tenant's application-*

The tenant's monetary claim is in the amount of \$1700, comprised of her security deposit of \$850, doubled. The tenant also claims for recovery of the filing fee.

The tenant submitted evidence that she provided her written forwarding address to the landlords on March 28, 2013, and again on April 29, 2013, and that the landlords have not returned any portion of her security deposit.

In response, the landlord agreed that she received the tenant's written forwarding address on April 29, 2013.

#### *Landlords' application-*

The landlords' monetary claim is in the amount of \$6349.13, comprised of three months of lost rent revenue for a total of \$5100 and cost of replacing the carpet and vinyl for \$2099.13, less the tenant's security deposit.

The landlords' relevant documentary evidence included two photographs, the written tenancy agreement and a carpet and vinyl invoice, dated June 28, 2013, with an installation date of June 24, 2013.

In support of their application, the landlords testified that they began advertising the rental unit at the beginning of April 2013, and listed May 1, 2013, as the available date.

In response to my questions, the landlords stated that the rental unit was advertised on free on-line advertising sites, not the local newspaper. Further the landlord stated that she believed the listed monthly rent for the rental unit was \$1700 and the listing was probably renewed weekly. The monthly rent requested was never reduced, according to the landlord.

The landlord said that she had 2-3 people managing the listings, as she lives out of province.

The landlord also stated that the rental unit did not show well for prospective tenants as the walls needed to be repainted and the landlords had to wait for the vinyl replacement. The landlord agreed the painting was due to the tenant's fault.

As to the flooring replacement, the landlords submitted that the master bedroom carpet required replacing after the tenancy ended, as well as the vinyl flooring, due to tenant damage.

In response to my question the landlord stated that the carpet was 10-14 years old and that the vinyl was at least 25 years old.

The landlord submitted that at sometime over the summer, they made the decision to sell the residential property, and that it is now listed for sale, as of July 31, 2013.

In response, the tenant said that the landlords knew that she ran her daycare business out of the rental unit, and that ultimately she discovered that the suite was not a legal suite, which impacted her business. Another factor impacting her business, according to the tenant, was that her neighbours, other tenants sharing the residential property, were heavy marijuana users, as they shared a common ventilation system.

The tenant said she had concerns that the marijuana smoke and illegal suite would result in a loss of children.

### Analysis

#### *Tenant's application-*

I find that the landlords have breached the Act.

Under section 38(1) of the Act, at the end of a tenancy a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain

the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy if the tenant's right to the security deposit has not been extinguished, which I do not find to be the case here.

Section 38(6) of the *Act* states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the amount of their security deposit.

In the case before me I find the landlords had received the tenant's written forwarding address on April 29, 2013, by their admission, the tenancy ended either the last week in April, according to the tenant, or May 1 or 2, 2013, according to the landlords, and therefore the landlords had until no later than May 17, 2013, to file an application for dispute resolution claiming against the tenant's security deposit or to return the security deposit in full; however, the landlords did not file their application for dispute resolution until August 9, 2013, and have not returned the tenant's security deposit.

I therefore grant the tenant's application for a return of her security deposit, doubled.

As I find merit with the tenant's application, I grant her recovery of her filing fee of \$50.

Due to the above I therefore grant the tenant a monetary award of \$1750, comprised of her security deposit of \$850, doubled, to \$1700, and for recovery of the filing fee of \$50.

#### *Landlords' application-*

In a claim for damage or loss under the *Act*, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the landlords in this case, has to prove, with a balance of probabilities, four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the *Act* or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

*Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.*

*Loss of rent revenue-* As to the issue of loss of rent revenue for May, June and July, 2013, Section 45(2) of the *Act* states that a tenant may end a fixed term tenancy by

giving the landlord written notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In other words, the tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term.

In the case before me, I accept that the tenant provided insufficient notice that she was ending the fixed term tenancy agreement prior to the end of the fixed term and I find the tenant was responsible to pay monthly rent to the landlords until the end of the fixed term, here, July 31, 2013, subject to the landlords' requirement that they take reasonable measures to minimize their loss.

In this instance, I find the landlords failed to provide sufficient evidence that they took reasonable steps to mitigate their loss of unpaid rent. I reached this conclusion as I could not rely with any confidence on the unclear and unsubstantiated statements of the landlords, such as the landlords said that they began advertising in the beginning of April, but were not sure of the date, or if or when the online listings were renewed, or provide the content of the advertisements.

Without having at least some of the advertisements to review, to determine the content and frequency of the advertisements, I could not conclude whether the steps taken by the landlords were reasonable. I also considered that the landlords never reduced the amount of monthly rent requested, which I find would be another reasonable measure in minimizing their loss.

I was also influenced by the landlords' admission that the rental unit was placed on the market for sale and that the rental unit did not show well, as it was in need of painting, not the fault of the tenant, but of the age of the painting.

Due to the above, I find the landlords submitted insufficient evidence that they have met step 4 of their burden of proof, I dismiss their monetary claim for loss of rent revenue for May, June and July, in the amount of \$5100.

*Carpet and vinyl replacement*-A key component in establishing a claim for damage is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23 and 24 of the Residential Tenancy Act deal with the

landlord and tenant obligations in conducting and completing the condition inspections. In the circumstances before me the landlords have failed to meet their obligation under of the Act of conducting the move-in inspection and completing the inspection reports resulting in extinguishment of the landlords' right to the tenant's security deposit. There is also no independent record of the condition of the rental unit at the start and end of the tenancy.

In the absence of any other evidence, such as the condition inspection reports or photographs prior to and after the tenancy, I do not accept the landlords' claim for damages to the rental unit. The landlord has the burden of proof on the balance of probabilities and I find the landlord's evidence lack of compelling evidence, does not meet the burden of proof.

Had I not made the decision to dismiss the landlords' monetary claim due to lack of sufficient evidence, I would still dismiss their claim as Residential Tenancy Branch Policy Guideline # 40 provides a table for the useful life of Building Elements. Where an item has a limited useful life, it is necessary to reduce the repair or replacement cost by the depreciation of the original item. Carpet and vinyl flooring have a useful life of 10 years and, as both of these items were at least 10-14 years of age, I find that the carpet and vinyl in the rental unit had fully depreciated.

I therefore find the landlords have submitted insufficient evidence to prove their monetary claim for loss of rent revenue and carpet and vinyl replacement, and I therefore dismiss their application, without leave to reapply.

As I have dismissed their application, I also decline to award them recovery of the filing fee.

### Conclusion

The tenant's application for monetary compensation is granted.

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$1750, which I have enclosed with the tenant's Decision.

Should the landlords fail to pay the tenant this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlords are advised that costs of such enforcement are recoverable from the landlords.

The landlords' application is dismissed.

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* and is being mailed to both the applicant/tenant and the applicants/landlords.

Dated: October 04, 2013

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Residential Tenancy Branch

