



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Nystar Dev. Corp Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

MNDC; MNSD; FF

### **Introduction**

This is the Landlord's application for compensation for damage or loss under the Act, regulation or tenancy agreement; to retain the security deposit in partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

The Landlord testified that he mailed the Notice of Hearing documents and copies of his documentary evidence to the Tenants, by registered mail, on October 10, 2013. The Tenant acknowledged service of the documents.

### **Issues to be Decided**

- Is the Landlord entitled to compensation for loss of revenue for the month of October, 2013?
- May the Landlord apply the security deposit towards its monetary award?

### **Background and Evidence**

This tenancy began on May 1, 2012. It was initially a term lease, ending April 30, 2013, and converted to a month to month tenancy thereafter. At the end of the tenancy, monthly rent was \$1,183.32, due on the first day of each month. The Tenants paid a security deposit in the amount of \$550.00 on April 1, 2012.

The Tenants sent the Landlord an e-mail on September 3, 2013, indicating that they were ending the tenancy effective September 30, 2013. The Landlord's agent submitted that the Tenants did not give proper written notice as required under Section 45 of the Act and therefore the Landlord seeks a monetary award for rent for the month of October, 2013.

The Tenants submitted that the Landlord was able to re-rent the rental unit for October 1, 2013, and therefore the Landlord's claim for loss of revenue is false.

The Landlord's agent agreed that the rental unit was re-rented for the same amount of rent effective October 1, 2013, but stated that he had been informed by a person from a support group for landlords as well as an information officer from the Residential Tenancy Branch that he could claim compensation anyway, because the Tenants did not give proper notice.

### **Analysis**

I cannot comment on what may have been said to the Landlord's agent with respect to its claim except to state that with respect to information officers at the Residential Tenancy Branch, they provide information based on what only one of the parties tells them, which may be incomplete or misunderstood information.

This is the Landlord's claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish its claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenants pay for the loss requires the Landlord to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, I find that the Landlord made reasonable attempts to minimize its losses and was able to re-rent the rental unit for the first of October, 2013, at the same amount of rent. Therefore, I find that the Landlord suffered no loss, even though the Tenants did not comply with the Act.

Therefore, the Landlord's application is dismissed.

I hereby order that the Landlord return the security deposit to the Tenant's immediately and provide the Tenants with a Monetary Order in the amount of **\$550.00**.

The Tenants are cautioned of the provisions of Sections 45 and 52 of the Act.

**Conclusion**

The Landlord's application is dismissed.

I hereby provide the Tenants with a Monetary Order in the amount of **\$550.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: January 16, 2014

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Residential Tenancy Branch

