



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes:

MNSD, FF

### Introduction

This hearing was scheduled as a result of cross applications.

The Landlord filed an Application for Dispute Resolution in which the Landlord applied to retain the Tenant's security deposit as compensation for the loss of revenue they experienced and to recover the fee the Landlord paid to file this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution in which the Tenant applied for the return of his security deposit and to recover the fee he paid to file this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

### Issue(s) to be Decided

The issues to be decided in relation to the Landlord's Application for Dispute Resolution is whether the Landlord is entitled to retain the security deposit as compensation for the loss of revenue they experienced and whether the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The issues to be decided in relation to the Tenant's Application for Dispute Resolution is whether the Tenant is entitled to the return of his security deposit and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

### Background and Evidence

The Landlord and the Tenant agree that the Tenant responded to a Craig's List advertisement for this rental unit on, or about, August 12, 2009; that the Landlord had originally asked for monthly rent of \$800.00 but that the Landlord agreed to the Tenant's request to reduce the rent to \$750.00 per month; that on August 14, 2009 the Tenant advised the Landlord that he wanted to rent the rental unit at the monthly rate of \$750.00; that the Landlord asked the Tenant for a deposit of \$375.00 in order to secure the rental unit; that the Tenant paid the deposit to the Landlord on August 14, 2009; that on August 17, 2009 the Tenant advised the Landlord that he no longer wished to move into the rental unit; and that the female Landlord advised the Tenant that she would return his deposit if she was able to find a new tenant for the rental unit .

The Tenant stated that he understood that he was providing the deposit to ensure that the Landlord did not rent the unit to anyone else. He stated that they did not sign a tenancy agreement and that they talked about him moving some property in prior to the beginning of September, but a start date to the tenancy was not firmly established. He stated that he decided not to move into the rental unit because he was able to find a more suitable rental unit. He stated that he does not believe the Landlord made reasonable attempts to advertise the rental unit after August 17, 2009, as the advertisement on Craig's List was not updated.

The female Landlord stated that when the Tenant provided her with a deposit of \$375.00 she understood that they were entering into a tenancy agreement; that he might be moving property into the rental unit prior to the beginning of September; that she could not rent the unit to anyone else; and that the deposit represented a security deposit for the rental unit.

The female Landlord stated that she did not advertise again on Craig's List after August 17, 2009 as she was not satisfied with the responses she received from her original advertisement. She stated that she advertised in the Prince George Free Press and the Prince George Citizen but was unable to find anyone to occupy the unit for the month of September. She contends that the Landlord lost revenue, in the amount of \$750.00, because the Tenant did not pay rent for the month of September.

The Tenant stated that he did not provided the Landlord with his forwarding address, in writing, after the tenancy ended as the Landlord had his forwarding address on the cheque he tendered on August 14, 2009 and on his business card that he gave the Landlord on that date.

### Analysis

Section 1 of the *Residential Tenancy Act (Act)* defines a tenancy agreement as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

I find that the Landlord and the Tenant entered into a tenancy agreement on August 14, 2009 when they agreed that the Tenant would pay a deposit of \$375.00. In reaching this conclusion I was strongly influenced by the fact that the parties agreed that the Tenant would pay monthly rent of \$750.00 and by their mutual understanding that he might be moving into the rental unit sometime prior to September 01, 2009. At the hearing both parties acknowledged that they understood that the purpose of paying the \$375.00 was so that the Landlord would not rent the unit to another party. I find that this clearly indicates the intent of both parties to enter into a tenancy agreement.

I find that the Tenant did not comply with section 45(1) of the *Act* when he ended this tenancy prior to moving into the rental unit without providing the Landlord with one month's written notice of his intent to end the tenancy. I therefore find that the Tenant must compensate the Landlord for losses the Landlord experienced as a result of the Tenant's non-compliance with the *Act*, pursuant to section 67 of the *Act*.

In these circumstances I accept that the Landlord experienced a loss of revenue, in the amount of \$750.00, for the month of September. The Landlord is only seeking compensation in the amount of \$375.00, and I find that the Landlord is entitled to compensation in that amount.

I do not accept the Tenant's argument that the Landlord did not properly mitigate these losses because the Landlord did not update their advertisement on Craig's List. In reaching this conclusion I was strongly influenced by the undisputed testimony of the female Landlord, who declared that she advertised the rental unit in two newspapers and I do not find that the Landlord is obligated to advertise in every available format.

I find that the Tenant's Application for Dispute Resolution has been without merit and I hereby dismiss his application for to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

I find that the Landlord was obligated, pursuant to section 38(1)(d) of the *Act*, to file an Application for Dispute Resolution if they wished to keep the Tenant's security deposit and that, in these circumstances, they could not rely on the Application for Dispute Resolution that was filed by the Tenant. I find that the Landlord's Application for Dispute Resolution has merit and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

I find that although the Tenant gave the Landlord his work and his current home address when he entered into this tenancy agreement, he did not advise the Landlord, in writing, that either of these addresses could be used as a forwarding address for the purposes of returning his security deposit, as is required by section 38(1) of the *Act*.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$425.00, which is comprised on \$375.00 as compensation for loss of revenue and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

I hereby authorize the Landlord to retain the security deposit of \$375.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$50.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province 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: December 31, 2009.

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Dispute Resolution Officer