

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This is an application by the Tenants for a monetary order for return of double their security deposit and to recover the filing fee for their claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The Landlord had used one name on the tenancy agreement and insisted on being called another name during the later part of the hearing.

### Issue(s) to be Decided

Has there been a breach of Section 38 of the Residential Tenancy Act by the Landlord?

### Background and Evidence

The Tenants paid a security deposit of \$700.00 on August 1, 2008. The Tenants vacated the premises on September 15, 2009. The Tenants provided the Landlord with a written notice of the forwarding address to return the security deposit to on August 4, 2009, and did not sign over a portion of the security deposit.

The Landlord did not complete move in or move condition inspection reports. She testified that the Tenants agreed to waive these.

The Landlord claimed the forwarding address was not effective for the Tenants until September 30, 2009.

The Landlord did not file a claim to keep all or a portion of the security deposit, nor did she file a claim for the alleged clean up or refuse removal, or any other damages she alleges.

On October 19, 2009, the Tenants received a portion of their security deposit back, in the amount of \$451.99.

### Analysis

Based on the foregoing, the affirmed testimony and evidence, and on a balance of probabilities, I find the Landlord has breached the Act.

There was no evidence to show that the Tenants had agreed, in writing and signed by them, that the Landlord could retain any portion of the security deposit, plus interest.

There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants, to retain a portion of the security deposit, plus interest.

The Landlord attempted to make a claim through the Application of the Tenants, to offset against the security deposit. This is a breach of the Act and the rules of natural justice. Had the Landlord wanted to make a claim, she should have filed her own Application, rather than try to claim through the Tenants' Application.

Neither party can agree to waive the required provisions of the Act to perform condition inspection reports. Section 5 of the Act prohibits anyone from contracting outside of, or avoiding, any provisions of the Act.

### Conclusion

The Landlord has breached section 38 of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies in British Columbia. She failed to do this.

In accordance with section 38 of the Act, I find that the Landlord is not entitled to retain any portion of the security deposit or interest.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenants the sum of **\$1,002.40**, calculated as double the security deposit (2 x \$700.00), plus the interest on the original amount held (\$4.39), plus the \$50.00 fee for filing this Application, less the \$451.99 already paid to the Tenants.

The Tenants are given a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

As the Landlord appears to have little or no knowledge of the laws pertaining to her business, I have enclosed a guidebook for future reference.

Lastly, I note that the Landlord and her Agent became rude, argumentative and interruptive following my determination in this matter. Both the Landlord and her Agent left the hearing before it concluded.

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 13, 2010.

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Dispute Resolution Officer