

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution for a monetary order.

The hearing was conducted via teleconference and was attended by the tenants and the landlords.

### Issues(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for double the amount of all or part of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenants submitted into evidence the following document:

- A copy of a rental agreement signed by both parties on April 18, 2009 for a 6 month fixed term tenancy beginning on May 1, 2009 for a monthly rent of \$1,350.00 due on the 1<sup>st</sup> of the month. A security deposit of \$675 and a pet damage deposit of \$675.00 were paid;
- A copy of an envelope from the landlord to the tenant date stamped by Canada Post as November 19, 2009;
- A copy of a cheque from the landlord in the amount of \$985.50 dated November 13, 2009;
- A summary and breakdown of the landlord's claim against the security deposit and pet damage deposit;
- A letter dated November 25, 2009 from the tenants to the landlords requesting the return of the entire security deposit; and
- A copy of a receipt for a carpet cleaner rental in the amount of \$58.78.

The tenants testified they provided the landlord with their forwarding address via text message prior to the end of the tenancy. The landlord testified the addressed provided by the tenants did not include a postal code and that he attempted to obtain the postal code from the Canada Post website and could not do so. He further stated he contacted the tenants to get the postal code but was unable to confirm when he did so. The tenants confirmed the landlord did contact them for the postal code sometime within the first 10 days of November 2009.

The landlord could not provide any evidence or testimony confirming the date he put the returned portion of the security deposit in the mail. The tenants confirmed that the envelope submitted into evidence was date stamped by Canada Post as November 19, 2009. The landlord did not dispute this.

The landlord confirmed that no move in inspection was completed but that the tenants did complete a walk through inspection with the tenant at the end of the tenancy. Both parties agreed that at the time of the walk through the landlord confirmed the only problem with the unit was that the carpets were not cleaned.

Subsequent to the walk through the tenant rented a carpet cleaner and cleaned the carpets, he later contacted the landlord and advised him that he had done so. The landlord testified that within a couple of weeks they re-inspected the rental unit, without the tenants, and determined the carpets required cleaning; all the appliances and kitchen cabinets required cleaning; light bulbs were burnt out; a bathroom shelf required repair; and a blind required replacement.

The landlord testified that he did not doubt the tenant had rented a carpet cleaner and cleaned the carpets but they required additional cleaning upon the additional inspection. The landlord further stated no additional contact was made with the tenants to discuss these new findings.

### Analysis

Section 38(1) of the *Act* states that a landlord must within 15 days of the end of the tenancy and receipt of the tenant's forwarding address return the tenant's security and pet damage deposit less any mutually agreed upon deductions or file an Application for Dispute Resolution.

Under the *Act*, the onus of providing the landlord with a complete forwarding address for the purposes of returning a security deposit is on the tenant. While the tenant provided a partial forwarding address prior to the end of the tenancy I find that the complete address was not provided until, by the tenant's testimony, as late as November 10, 2009.

Although no move out inspection report was completed the landlord and tenant did do a walk through and both parties agree to the understanding that the only outstanding issue was the carpet cleaning. The tenant has shown that he took action to resolve that carpet cleaning required by the landlord.

The landlord cannot then complete a separate inspection without the tenant in attendance or without providing the tenant with an opportunity to rectify any identified problems with the condition of the rental unit. As such, I find the tenants are entitled to the return of the entire security deposit.

The tenants are claiming interest on the security deposit at 6% for 123 days, however Section 4 of the Residential Tenancy Regulation states the rate of interest under Section 38 of the *Act* that is payable to a tenant on a security deposit or pet damage deposit is 4.5% below the prime lending rate of the principal banker to the Province on the first day of each calendar year, compounded annually.

These rates are found on the Residential Tenancy Branch website: (<http://www.rto.gov.bc.ca/content/calculator/rates.aspx>). The rate for 2009 is 0%, as such, the tenants are not entitled to any interest on the return of their security deposit.

Section 38(6) of the *Act* states that if a landlord does not return the security deposit or file an Application within 15 days of the end of the tenancy and receipt, in writing, of the forwarding address the landlord must pay the tenant double the amount of the deposits.

The landlord provided the tenants with \$985.50 leaving a balance of \$364.50 outstanding. As the landlord was not compliant with Section 38 (1) in regards to the outstanding balance of \$364.50, I find that in accordance with Section 38(6) the tenants are entitled to double the amount of the outstanding security deposit.

### Conclusion

I find that the tenants are entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$779.00** comprised of \$729.00 double the amount of the outstanding security deposit owed and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlords and may be filed in the Provincial Court (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: April 15, 2010.

---

Dispute Resolution Officer