

## **DECISION**

Dispute Codes: MNDC, MNSD, OLC, FF

### **Introduction**

This is the Tenant's application for a Monetary Order for compensation pursuant to the provisions of Section 51 of the Residential Tenancy Act (the "Act") and double the security deposit; for an Order that the Landlords comply with the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlords.

The Tenant gave affirmed testimony and this matter proceeded on its merits.

### **Issues to be Decided**

Is the Tenant entitled to a Monetary Order as claimed?

### **Background and Evidence**

The Tenant testified that she served each of the Landlords with the Notice of Hearing documents, by mailing the documents by registered mail, on December 17, 2009. The Tenant testified that she checked the Canada Post website to confirm the documents were delivered, and provided copies of the registered mail receipts and tracking numbers in evidence.

The Tenant testified that she provided the Landlords with written notification of her forwarding address on December 7, 2010. The Tenant stated that she did not agree to the Landlords retaining any of the security deposit.

The Tenant provided a copy of the tenancy agreement in evidence, along with a copy of a 2 month Notice to End Tenancy for Landlord's Use, issued October 30, 2009. The Notice indicates an effective end of tenancy date of January 9, 2010. The Tenant

testified that she paid a security deposit in the amount of \$750.00 on September 18, 2007. Monthly rent was \$1,500.00.

The Tenant testified that on November 17, 2009, she gave the Landlords notice that she would be vacating the rental unit at the end of November, 2009. The Tenant stated that she paid rent for the month of November, 2009, and that that she moved out of the rental unit on November 30, 2009.

The Tenant testified that there was no move-in or move-out Condition Inspection Report done.

### **Analysis**

I am satisfied that the Landlords were served with the Notice of Hearing documents in accordance with the provisions of Section 89(1)(c) of the Act. Service in this manner is deemed to be effected 5 days after mailing the documents. Despite being served with the documents, the Landlords did not sign into the teleconference and the Hearing proceeded in their absence.

The Landlords sought to end the tenancy under the provisions of Section 49(5) of the Act (sale of the rental unit). Section 50 of the Act states:

#### **Tenant may end tenancy early following notice under certain sections**

- 50** (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by
- (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and
  - (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.
- (2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3) A notice under this section does not affect the tenant's right to compensation under section 51 *[tenant's compensation: section 49 notice]*.

Section 51 of the Act states:

**Tenant's compensation: section 49 notice**

**51 (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.**

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

(emphasis added)

Based on the undisputed testimony of the Tenant, I am satisfied that the tenancy was ended pursuant to the provisions of Section 50 of the Act, and that the Landlords did not provide the Tenant with compensation pursuant to the provisions of Section 51(1) of the Act. Therefore, I find that the Tenant is entitled to compensation in the amount of \$1,500.00.

A security deposit is held in trust for a tenant, to be applied in accordance with the provisions of Section 38 of the Act, which states:

### **Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

**(6) If a landlord does not comply with subsection (1), the landlord**

**(a) may not make a claim against the security deposit or any pet damage deposit, and**

**(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) *[service of documents]* or give the deposit personally to the tenant.

(emphasis added)

The Landlords did not return the security deposit, or file an application against the security deposit within 15 days of the date the Tenant provided her forwarding address, and therefore, I find that the Tenant is entitled to double the amount of the security deposit from the Landlords, in accordance with the provisions of Section 38(6) of the Act.

The Tenant has been successful in her application and is entitled to recover the cost of the filing fee from the Landlords.

I hereby provide the Tenant with a monetary order, calculated as follows:

Compensation pursuant to Section 51 of the Act	\$1,500.00
Compensation pursuant to Section 38 of the Act	\$1,500.00
Accrued interest on the security deposit of \$750.00 paid Sept 18/07	\$14.54
Recover of filing fee	<u>\$50.00</u>
Total monetary award against the Landlords	\$3,064.54

### **Conclusion**

I hereby grant the Tenant a Monetary Order in the amount of \$3,064.54 against the Landlords. This Order must be served on the Landlords and 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: May 31, 2010