

## **DECISION**

### **Dispute Codes**

MND, MNDC, MNR, MNSD, FF

### **Introduction**

This is the Landlord's application for a Monetary Order for damages to the rental unit, compensation for damage or loss and unpaid rent; to apply the security deposit in partial satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenants.

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

### **Issues to be Decided**

- Are the Landlords entitled to a monetary order for loss of rent for the month of December, 2009, and damage to the rental property?

### **Background and Evidence**

The following facts were not in dispute:

- This tenancy was a one year lease, commencing May 1, 2009. The lease was set to expire on April 30, 2010. Monthly rent was \$1,350.00, due on the first day of each month. The Tenants agreed to pay \$150.00 per month for their share of utilities. A copy of the tenancy agreement and addendum was entered in evidence.
- The Tenants paid a security deposit in the amount of \$675.00, on April 10, 2009.

- On November 1, 2009, the Tenants gave the Landlords written notice to end the tenancy on December 1, 2009. A copy of the notice was entered in evidence.
- On April 29, 2009, the parties performed a move-in inspection. On December 2, 2009, the parties performed a move-out inspection. Copies of the Condition Inspection Reports were entered in evidence.
- On December 14, 2009, the male Tenant signed the move-out Condition Inspection Report, agreeing that the Landlords could apply \$200.00 of the security deposit towards shampooing the carpets and other miscellaneous damage to the rental unit.
- The Landlords are holding the balance of the security deposit.

The Landlords testified that they were able to re-rent the rental unit effective January 1, 2010. The Landlords seek a monetary order against the Tenants, calculated as follows:

Loss of rent for the month of December, 2009	\$1,350.00
Unpaid utilities for the month of December, 2009	\$150.00
Cost to repair damages and shampoo carpet	\$200.00
Recovery of the filing fee	<u>\$50.00</u>
TOTAL	\$1,750.00

The female Tenant did not dispute the Landlords' claim, but testified that she provided the Landlords with written notification of her forwarding address on December 2, 2009, by leaving it at the rental unit. The female Tenant requested compensation pursuant to Section 38(6) of the Act.

The Landlords testified that they did not receive the Tenants' forwarding address in writing until they received the signed Condition Inspection Report from the male Tenant in mid-December.

### **Analysis**

Section 38 of the Act 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.

The Tenants submitted that they provided the Landlords with written notification of their forwarding address on December 2, 2009, by leaving the notification at the rental unit. The Tenants submitted that the Landlords did not return the security deposit, or file a claim against the security deposit within the 15 day time limit allowed under Section 38(1) of the Act. Therefore the Tenants submit that the Landlords must return double the security deposit to the Tenants. The Landlords deny receiving the Tenants' forwarding address until mid December, 2009, and submit that they filed their application on December 23, 2009, which is within the 15 day time frame.

Section 88 of the Act provides for methods of service of documents. I find that the Tenants did not serve the Landlords with written notification of their forwarding address in accordance with the provisions of Section 88 of the Act.

The Landlords have established a monetary award, as follows:

Description	Amount awarded
Unpaid rent for December, 2009	\$1,350.00
Unpaid utilities December, 2009	\$150.00
Costs to shampoo carpet and repair damage, as agreed by Tenants	\$200.00
TOTAL	\$1,700.00

The Landlords have been successful in their application and are entitled to recover the cost of the filing fee from the Tenants.

Pursuant to the provisions of Section 72 of the Act, the Landlords may apply the residual security deposit in partial satisfaction of their monetary award. No interest has accrued on the security deposit.

I hereby provide the Landlords with a Monetary Order against the Tenants, calculated as follows:

Description	Amount awarded
Total monetary award	\$1,700.00
Recovery of filing fee	\$50.00
Less residual security deposit (\$675.00 - \$200.00)	<u>-\$475.00</u>
TOTAL MONETARY ORDER AFTER SET-OFF	\$1,275.00

### **Conclusion**

I hereby grant the Landlords a Monetary Order in the amount of \$1,275.00 against the Tenants. This Order must be served on the Tenants 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: June 8, 2010