

## **DECISION**

**Dispute Codes**      MNDC, MNSD, FF

### **Introduction**

This matter was convened to hear the Tenant's application. The Tenant applied for a Monetary Order for compensation for damage or loss; for return of the security deposit; and to recover the cost of the filing fee from the Landlord.

Both parties signed into the conference and provided affirmed testimony.

### **Issues to be Determined**

- Is the Tenant entitled to compensation pursuant to the provisions of Section 51 of the Residential Tenancy Act (the "Act")?
- Is the Tenant entitled to return of the security deposit, pursuant to the provisions of Section 38 of the Act?

### **Background and Evidence**

The following facts were not in dispute:

- This tenancy ended pursuant to a 1 month Notice to End Tenancy for End of Employment with the Landlord.
- The Tenant paid a security deposit in the amount of \$200.00 on August 1, 1994.
- There was no written tenancy agreement.
- There was no Condition Inspection Report done at the start or at the end of the tenancy.
- The rental unit is a building situated on a working farm.

The Tenant testified that the Landlord had ended the tenancy because he wanted to use the rental unit for employees. The Tenant believes that the Landlord ended the

tenancy so he could increase the rent for a new tenant. The Tenant stated that he observed the rental property since he moved out in September, 2009, and that it has been empty for most of the time.

The Landlord testified that there were seasonal workers living in the rental unit with times in between when the rental unit was vacant.

The Tenant testified that he provided the Landlord with written notification of his forwarding address some time in December, 2009. The Landlord stated that he received the Tenant's forwarding address some time in December, 2009, and that he did not return the Tenant's security deposit. The Landlord stated that the Tenant left without paying rent for the months of August and September, 2009, and that the Tenant's cat ruined the carpets in the rental unit.

### **Analysis**

The tenancy ended as a result of a One Month Notice to End the Tenancy under Section 48 of the Act (Landlord's Notice: end of employment with the Landlord). The Tenant seeks compensation under the provisions of Section 51(2) of the Act, which states:

**51** (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)

There is no provision under Section 51 of the Act for compensation for double the monthly rent relating to a Notice to End Tenancy issued pursuant to the provisions of Section 48 of the Act. In any event, the Tenant claims that the rental unit is vacant for most of the time, and therefore his claim that the Landlord ended the tenancy in order to raise the rent seems unlikely. Therefore, this portion of the Tenant's claim is dismissed.

A security deposit is held in trust by the Landlord, to be administered 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 Landlord cannot arbitrarily withhold any of the security deposit. Unless the Landlord had the Tenant's written permission to retain any or all of the security deposit, the Landlord must either return the deposit in full, or file an Application for Dispute Resolution against the security deposit within the later of: the date the tenancy ended, or the date the Tenant provided his forwarding address in writing. The Landlord agreed he received the forwarding address in December of 2009, but did not file an Application or return the deposit to the Tenant. Therefore, in accordance with the provisions of Section 38(6) of the Act, the Landlord **must** pay the Tenant double the amount of the security deposit. Interest has accrued in the amount of \$42.60 on the security deposit. Therefore, I hereby the Tenant has established a monetary award in the amount of \$442.60.

The Tenant has been partially successful in his application and is entitled to recover the cost of the filing fee from the Landlord, in the amount of \$50.00.

**Conclusion**

I hereby grant the Tenant a Monetary Order in the amount of \$492.60 against the Landlord. This order must be served on the Landlord 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 28, 2010.

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