

## **Decision**

**Dispute Codes:** MND, MNSD, FF

### **Introduction**

This hearing dealt with two applications: i) by the landlord for a monetary order as compensation for damage to the unit, and recovery of the filing fee; ii) by the tenants for a monetary order for double the return of the security / pet damage deposit(s), and recovery of the filing fee. The agent for the tenants participated in the hearing and gave affirmed testimony.

Despite scheduling of the hearing in response to applications from both, the landlord and the tenants, and despite service of the tenants' application for dispute resolution and notice of hearing on the landlord by way of registered mail, the landlord did not appear.

### **Issues to be decided**

- Whether either party is entitled to any of the above under the Act

### **Background and Evidence**

There is no written tenancy agreement in evidence for what is understood to be a month-to-month tenancy commencing in mid-December 2008. It is understood that rent in the amount of \$1,400.00 was payable in advance on the first day of each month. A security / pet damage deposit(s) in the total amount of \$1,400.00 was collected near the outset of tenancy. There is no move-in condition inspection report in evidence.

Following notice to the landlord, the tenants vacated the unit on or about December 15, 2009. There is no move-out condition inspection report in evidence. Subsequently, by e-mail to the landlord dated December 29, 2009, a copy of which is not in evidence, the tenants informed the landlord of their forwarding address. However, the landlord has not returned the tenants' security / pet damage deposit(s).

## **Analysis**

The full text of the Act, regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca/](http://www.rto.gov.bc.ca/)

Section 38 of the Act speaks to **Return of security deposit and pet damage deposit**, in part as follows:

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.

Further, section 38(6) of the Act provides:

38(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.

Based on the documentary evidence and undisputed testimony of the tenants' agent, I find that the landlord did not comply with the above statutory provisions and that the tenants are therefore entitled to the double return of their security / pet damage deposit(s) in the amount of \$2,800.00 (2 x \$1,400.00) plus interest of \$00.98. As the tenants have succeeded in their application I find they are also entitled to recover the \$50.00 filing fee.

As the landlord failed to either appear or be represented at the hearing, the landlord's application is hereby dismissed.

### **Conclusion**

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the tenants in the amount of \$2,850.98. This order may be served on the landlord, filed in the Small Claims Court and enforced as an order of that Court.

The landlord's application is hereby dismissed.

DATE: June 9, 2010

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Dispute Resolution Officer