

## **Decision**

**Dispute Codes:** MNDC, MNSD, FF

### **Introduction**

This hearing dealt with an application by the tenants for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement, the double return of the security deposit, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

### **Issues to be decided**

- Whether the tenants are entitled to any of the above under the Act, regulation or tenancy agreement

### **Background and Evidence**

Pursuant to a written tenancy agreement, the month-to-month tenancy began on January 7, 2007. At the end of tenancy, monthly rent was approximately \$1,244.00. A security deposit of \$600.00 was collected at the outset of tenancy. A move-condition inspection and report were completed at the start of tenancy, however, a copy of the report is not in evidence.

Pursuant to section 49 of the Act, which speaks to **Landlord's notice: landlord's use of property**, the landlord issued a 2 month notice to end tenancy dated October 31, 2009. While the date shown on the notice by when the tenants must vacate the unit is December 31, 2009, by way of mutual agreement between the parties, the tenants vacated the unit on or about February 1, 2010. There is no dispute that, pursuant to section 51 of the Act, which addresses **Tenant's compensation: section 49 notice**, the tenants received from the landlord "the equivalent of one month's rent payable under the tenancy agreement." The landlord acknowledged that she had not repaid the tenants' security deposit. There was no formal move-out condition inspection or report completed by the parties at the end of tenancy.

The tenants did not dispute the landlord's testimony that after the end of tenancy, she herself had moved into the unit by the end of April 2010.

During the hearing the parties exchanged views on some of the circumstances surrounding the dispute, and undertook to achieve at least a partial resolution.

### **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 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a partial resolution. Specifically, the tenants withdrew the aspect of their application concerning recovery of the filing fee.

Section 51 of the Act, as above, provides in part as follows:

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.

Based on the undisputed testimony of the landlord, I find that she moved into the unit within approximately 3 months after the tenants vacated the unit. I find this to be “within a reasonable period,” and I therefore dismiss the aspect of the tenants’ application concerning compensation “that is the equivalent of double the monthly rent payable under the tenancy agreement.”

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**, and provides 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) 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.

The landlord does not dispute that she did not comply with the above statutory provisions in section 38(1) of the Act. Accordingly, as for the monetary order, I find that the tenants have established a claim of \$1,217.99. This is comprised of \$1,200.00 which is double the amount of the security deposit (2 x \$600.00) plus interest calculated on the original amount of the security deposit which is \$17.99.

During the hearing the parties agreed as follows: i) that the landlord will make a cheque payable to tenant "JGC" in the full amount as determined in the Decision; ii) that the cheque will be sent to the tenants at their home address, and iii) that the cheque will be put into the mail by no later than midnight, Wednesday, June 30, 2010.

### **Conclusion**

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the tenants in the amount of \$1,217.99. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and enforced as an order of that Court.

DATE: June 24, 2010

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Dispute Resolution Officer