

## **DECISION**

**Dispute Codes:** CNL, OPC, O and FF

### **Introduction**

These applications were brought by both the landlords and the tenant.

By application of February 12, 2010, the landlords seek a Monetary Order for loss of rent, damages, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

By prior application of December 29, 2009, the tenant seeks return of her security deposit in double pursuant to section 38(6) of the *Act* on the grounds that the landlord did not return it within 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address. The tenant also seeks return of five days rent on the grounds that she left the rental unit five days early for the convenience of the landlords. The tenant also seeks to recover her filing fee for this proceeding.

Despite having been served with the tenant's Notice of Hearing, and despite having made their own application scheduled to be heard at the same time, the landlords did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, the landlords' application is dismissed without leave to reapply and the hearing proceeded in their absence.

As a matter of note, in the absence of the landlords, it has been necessary to make adjustments on the style of cause. The need to do so arises from the fact that the rental

agreement is between an incorporated company plus one individual as landlord and one individual as tenant, identified as such on the tenant's application. However, the landlords' application is made by two individuals but not the company and names two individuals as tenants.

Therefore, based on the rental agreement and evidence given by the tenant, I have amended the landlords' style of cause to join the incorporated company, and I have deleted from it the one named tenant who is not a signatory to the rental agreement. In addition, the address on the landlords' application is different than that on the rental agreement so a copy of this decision will be sent to both.

### **Issues to be Decided**

This application requires a decision on whether the tenants are entitled to a Monetary Order for return of their security deposit, and whether the amount should be doubled. In addition, it must be decided whether the tenants are entitled to return of rent for the last five days of the tenancy.

### **Background and Evidence**

This was a fixed term tenancy agreement that started on September 15, 2009 and was set to end on March 31, 2010. Rent was \$2,800 per month and the landlord hold a security deposit of \$1,400 paid on August 15, 2009.

The rental unit was occupied by the tenant, her husband, her daughter and grandchild. According to the tenant and a lengthy exchange of emails between the parties which was submitted into evidence , the tenancy was the subject to a variation when the

landlords decided to put the rental unit on the market. The purpose of the tenancy was to provide temporary accommodation for the tenant while she was undergoing medical treatments in Victoria while returning to her home in Nanaimo on some weekends. While some showings took place on weekends when she was away, she was very apprehensive about showings that might take place while she was home. In addition, the tenant's husband had some difficulty adjusting to the sound of trains passing in early morning.

The exchange of emails shows that both parties tried to accommodate one another to deal with challenges.

The tenant gave evidence that there were no Condition Inspection reports completed at either the beginning or the end of the tenancy and the landlord was in possession of their home address at all times.

## **Analysis**

Section 38(1) of the *Act* provides that a landlord must, within 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address, either return the security deposit or make application for dispute resolution to make a claim against it.

Section 38(6) of the *Act* states that if the landlord does not comply with section 38(1), the landlord "must pay the tenant double the amount..."

In this case, I find that the landlords did not return the security deposits and did not apply for dispute resolution for authorization to claim against it until February 12, 2010,

more than two months after the tenants vacated and returned the keys to the rental unit, ending the tenancy under section 44(1)(d) of the *Act*.

Accordingly, I find that the landlords must now return the deposits in double in accordance with section 38(6) of the *Act*.

As to the return of the balance of the rent for November, I find that the tenant's departure on November 26, 2009 was part of a series of informal attempts by both parties to accommodate one another. It appears to have been the landlords' intention at the time to release the tenants from their fixed term agreement in exchange for their cooperation. In the absence of more formal actions by both parties to end the tenancy in accordance with the *Act*, I am not prepared to find that the landlords should return the five days' rent. Therefore, that claim is dismissed.

Having found merit in the tenants' application, I find that they are entitled to recover the \$50 filing fee for this proceeding from the landlord.

Thus, I find that the landlord owes to the tenants an amount calculated as follows:

To return the security deposit (No interest due)	\$1,400.00
To double the security deposit	1,400.00
Filing fee	50.00
<b>TOTAL</b>	<b>\$2,850.00</b>

## Conclusion

The tenant's copy of this decision is accompanied by a Monetary Order for \$2,850.00 enforceable through the Provincial Court of British Columbia, for service on the landlords.

June 2, 2010