

DECISION

Dispute Codes: MNSD, MNDC and FF

Introduction

This application was brought by the tenants seeking a Monetary Order for the one month's free rent payable to tenants who have received Notice to End Tenancy for landlord use.

The tenant's also sought return of their security deposit in double on the grounds that the landlord did not return it or make application to claim on it with 15 days of the latter of the end the tenancy or receipt of the tenants' forwarding address and recovery of the filing fee for this proceeding..

During the hearing, the tenants' waived their right to return of the security deposit in double.

Issues to be Decided

This application requires a decision on whether the tenants are entitled to a Monetary Order for one month's rent and return of their security deposit.

Background and Evidence

This tenancy began on December 1, 2007 and ended on February 28, 2010. Rent was \$1,550 and the landlords hold a security deposit of \$775 paid on or about December 1, 2007.

During the hearing, the parties concurred that on February 8, 2010, the landlord had given the tenants two-month notice to end the tenancy for landlord use on April 9, 2010, an end date that would have automatically been corrected to April 30, 2010 under section 53 of the *Act*. Although the notice was not on the prescribed form, it clearly stated that its purpose was landlord use.

Subsequently, the tenants exercised their right under section 50 of the *Act* and gave 10-days notice, dated February 25, 2010.

The landlord gave evidence that in giving notice, he had relied on the rental agreement which provided for either party to end the tenancy with one-month's notice. He stated that he had intended to return the security deposit, but having been advised that the tenants would be contesting the free month rent issue, he felt it best to await the dispute resolution hearing.

The tenants concurred that they had not given the full 10-day notice because they thought it would be to the landlord's advantage to have possession by the beginning of the month. The landlord stated that, in fact, the rental unit had remained empty for two months while the mortgage payments continued.

Analysis

On the question of the rental agreement requiring one month notice from either party, section 5 of the *Act* provides that neither party can contract outside of the *Act* and any provision that does so is of no effect.

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

In this matter, I find as fact that the landlords did not make application to claim the deposit within 15 days of the end of the tenancy and that they had the tenants' forwarding address.

Section 38(6) of the *Act* states that a landlord who does not comply with section 38(1), "must pay the tenant double the amount of the security deposit..." However, the right to double has been waived by the tenants in this matter subject to their receiving return of the full month's rent for February 2010.

Therefore, I find that the tenants are entitled to return of their security deposit plus interest.

Section 51 of the *Act* provides that tenants receiving two-month notice for landlord use under section 49 are entitled to receive one-month's free rent and I find that the applicant tenants are so entitled.

As the tenants' application has succeeded, I find that they may recover the filing fee for this proceeding from the landlord.

Thus, I find that the tenants are entitled to a Monetary Order, calculated as follows:

To return the tenants' security deposit	\$ 775.00
Interest (December 2007 to date)	12.63
To return one-month's rent	1550.00
Filing fee	<u>50.00</u>
TOTAL	\$2,387.63

Conclusion

The tenants' copy of this decision is accompanied by a Monetary Order for **\$2,387.63** enforceable through the Provincial Court of British Columbia, for service on the landlord.

August 3, 2010