

## **Decision**

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

### **Introduction**

This hearing dealt with two applications: i) by the tenants to dispute an additional rent increase / 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; ii) by the landlords for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement / retention 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 either party is entitled to any of the above under the Act, regulation or tenancy agreement

### **Background and Evidence**

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the year-long fixed term of tenancy began on October 1, 2005. Following the expiration of the fixed term, tenancy continued on a month-to-month basis until May 31, 2010. A security deposit of \$487.50 was collected near the start of tenancy. No move-in or move-out condition inspection reports were completed.

Monthly rent at the outset of tenancy was \$975.00. Subsequently, by way of verbal notice given by the landlords almost immediately before the effective date of the increase, rent was increased by \$25.00 to \$1,000.00 effective October 1, 2006.

Following the above rent increase, by way of written notice dated September 26, 2007, rent was increased by \$100.00 to \$1,100.00 effective October 1, 2007. The tenants

dispute the improper notices of rent increase as well as the amount of the rent increases.

In early May 2010 the tenants verbally informed the landlords of their intent to end tenancy at the end of May 2010. The parties appear to agree that the tenants vacated the unit and finished removing all their possessions on June 2, 2010. Following this, the landlords did not advertise for new renters but, rather, advertised the unit for sale. Ultimately the unit was sold within several months after the end of tenancy. The landlords seek compensation for loss of rent for two days of over holding by the tenants in June 2010, in addition to loss of rental income for the balance of June and all of July 2010; the landlords calculate the value of this aspect of their claim to be \$2,100.00.

There does not appear to be any dispute that the tenants informed the landlords in writing of their forwarding address and requested the return of their security deposit on June 2, 2010. However, the landlords have not returned the security deposit and after being served with the tenants' application for dispute resolution, the landlords filed their own application on September 2, 2010.

Separate from their claim for unpaid rent / loss of rental income, the landlords consider that the security deposit sufficiently reimburses them for costs associated with a bill issued by the local government authority in regard to "clearing a public sidewalk" in December 2009, removal of rubbish left behind after the tenants vacated the unit, and costs arising from miscellaneous cleaning and repairs after the end of tenancy.

### **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/)

While I have turned my mind to all aspects of the evidence presented, not all particulars of the arguments or submissions are reproduced here.

## TENANTS' CLAIM

Section 38 of the Act speaks to **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) 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.

As the landlords failed to either return the security deposit or file an application for dispute resolution within 15 days after being advised in writing of the tenants' forwarding address on June 2, 2010, pursuant to the above statutory provisions I find that the

tenants have established entitlement to the double return of their security deposit in the amount of \$975.00 (2 x \$487.50) plus interest of \$17.26 for a total claim of **\$992.26\***.

Part 3, sections 40, 41, 42 & 43 of the Act address rent increases. In particular, section 42 of the Act states, in part:

42(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

Section 43 of the Act states, in part:

43(1) A landlord may impose a rent increase only up to the amount

(a) calculated in accordance with the regulations,

(b) ordered by the director on an application under subsection (3), or

(c) agreed to by the tenant in writing.

Where it concerns the first rent increase, the tenants were verbally informed of its introduction. Accordingly, I find that notice of the rent increase was not given in the approved form. Further, the tenants were not given at least 3 months notice of the rent increase, rather, it was given almost immediately before the rent increase took effect. Pursuant to the foregoing, I find that the first rent increase of \$25.00 from \$975.00 to \$1,000.00 on October 1, 2006 is of no effect. In the result, I find that the tenants have established entitlement to compensation for the 12 month overpayment of rent from October 1, 2006 to September 30, 2007 in the amount of **\$300.00\***, which is calculated as follows:

$\$1,000.00$  (unauthorized rent) -  $\$975.00$  (authorized rent) =  $\$25.00$  (difference)

$\$25.00$  (difference) x 12 (months) = **\$300.00**

As to the second rent increase, while it was introduced by way of the correct form, it was dated September 26, 2007 for an increase taking effect October 1, 2007. I therefore find that the tenants were not provided with at least 3 months notice. The earliest date this notice can take effect is January 1, 2008.

Further, pursuant to the Regulation, the amount of a rent increase that takes effect in 2008 is limited to 3.7%. In the result, effective January 1, 2008, monthly rent of \$975.00 could be increased by \$36.07 to \$1,011.07 (3.7% x \$975.00).

I therefore find that the tenants have established entitlement to compensation for the overpayment of rent for the two periods from October 1 to December 31, 2007, and from January 1, 2008 to May 31, 2010, in the total amount of **\$2,953.97\***. The calculation of these entitlements is as follows:

October 1 to December 31, 2007

\$1,100.00 (unauthorized rent) - \$975.00 (authorized rent) = \$125.00 (difference)

\$125.00 (difference) x 3 (months) = **\$375.00** (entitlement).

January 1, 2008 to May 31, 2010

\$1,100.00 (unauthorized rent) - \$1,011.07 (authorized rent) = \$88.93 (difference)

\$88.93 (difference) x 29 (months) = **\$2,578.97** (entitlement)

The overall total entitlement to compensation established by the tenants is therefore **\$4,246.23** (\$992.26 + \$300.00 + \$2,953.97).

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## LANDLORDS' CLAIM

Section 45 of the Act speaks to **Tenant's notice**, and provides in part as follows:

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) Is not earlier than one month after the date the landlord receives the notice, and

(b) Is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Based on the documentary evidence and testimony, I find that the tenants failed to provide proper notice to end the tenancy at the end of May 2010, and I further find that the tenants did not vacate the unit until June 2, 2010. Accordingly, I find that the landlord has established entitlement to two days' rent arising from the tenants' overholding of the unit during June 1 & 2, 2010.

However, in regard to the landlords' claim for loss of rental income for the balance of June and all of July 2010, section 7 of the Act addresses **Liability for not complying with this Act or a tenancy agreement**, and provides in part as follows:

7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Further, Residential Tenancy Policy Guideline # 3 addresses "Claims for Rent and Damages for Loss of Rent," and provides in part:

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent

the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.

As the landlords undertook to sell the unit after the end of the subject tenancy, rather than seek new renters, I find that the landlords did not undertake to mitigate their loss. Accordingly, the application for compensation related to unpaid rent / loss of rental income from June 3, 2010 onwards is hereby dismissed.

Residential Tenancy Policy Guideline # 3 speaks to “overholding,” in part as follows:

A tenant is not liable to pay rent after a tenancy agreement has ended.....however, if a tenant remains in possession of the premises (overholds), the tenant will be liable to pay occupation rent on a *per diem* basis until the landlord recovers possession of the premises.

Pursuant to all of the above, I find that the landlords have established entitlement to rent for June 1 & 2, 2010, during which time the tenants remained in possession of the unit. I find the amount of this entitlement is **\$67.40\***, which is calculated as follows:

$\$1,011.07 \text{ (authorized rent)} \div 30 \text{ (\# of days in June)} = \$33.70 \text{ (per diem)}$

$\$33.70 \text{ (per diem)} \times 2 \text{ (\# of days of overholding)} = \textbf{\$67.40}$

Where it concerns the recovery of costs associated with a bill presented to the landlords for clearing a public sidewalk, removal of rubbish, and miscellaneous costs arising from cleaning and repairs, in the absence of sufficient documentary evidence to support these claims, these aspects of the application are hereby dismissed.

The total entitlement established by the landlords is therefore **\$67.40**.

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As both parties have achieved some success with their applications, I hereby dismiss their respective applications to recover the filing fee.

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Offsetting the respective entitlements to compensation, I find that the tenants have established a net claim of \$4,178.83 (\$4,246.23 - \$67.40). I therefore grant the tenants a monetary order under section 67 of the Act for this amount.

**Conclusion**

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$4,178.83**. Should it be necessary, this order may be served on the landlords, filed in the Small Claims Court and enforced as an order of that Court.

DATE: December 8, 2010

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Dispute Resolution Officer