



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This was the hearing of an application by the tenants for a monetary order and an order for the return of their security deposit, including double the amount of the deposit. The hearing was conducted by conference call. The tenants attended the hearing, but the landlord did not call in and did not participate although she was served with the application for dispute resolution and Notice of Hearing by registered mail sent on July 30, 2010.

Issue(s) to be Decided

Are the tenants entitled to a monetary order and if so, in what amount?

Background and Evidence

The rental unit is a house in Whistler. The tenancy began August 6, 2009. Monthly rent was \$2,000.00. the tenants testified that they paid the landlord a \$4,000.00 deposit consisting of a \$2,000.00 security deposit and a \$2,000.00 pet deposit. The rent was reduced to \$1,800.00 during the latter part of the tenancy.

The tenancy ended by mutual agreement on July 3, 2010. By agreement between the landlord and the tenants the landlord applied a portion of the tenants' deposit to rent due for the period from June 15, 2010 to July 2, 2010.

The tenants gave the landlord their forwarding address in writing by a document dated July 5, 2010. The document was intended by the tenants to be signed by the landlord to acknowledge that the landlord would refund the remainder of their security deposit in

the amount of \$2,920.00, this being the amount remaining after deduction of rent for the period from June 15th to July 2nd. The document was delivered to the landlord but it was not clear from the tenants' evidence whether the landlord signed the document.

The tenants complained that the landlord rented the yard at the rental property to an individual for seven months to park his travel trailer. The tenants produced evidence to show that the landlord was paid \$500.00 per month for the storage of the trailer. The tenants claimed payment of the sum of \$3,500.00, being the amount of rent they said was paid to the landlord by the trailer owner.

In the tenant's application for dispute resolution they claimed payment of the sum of \$2,920.00. They filed additional documents on November 11, 2010 and included an altered copy of the application form with the monetary claim increased to the amount of \$9,980.00.

The tenancy agreement contained the notation that the landlord may park a trailer on the property for family use occasionally. The tenants said they were inconvenienced by the trailer because it restricted the use of the yard for their dog.

Analysis

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an Order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. If the landlord does not comply with these provisions, she may not

make a claim against the deposit and must pay the tenant double the amount of the deposit.

I am satisfied that the tenants provided a forwarding address in writing by the July 5th document delivered to the landlord , and that they served the landlord with documents notifying the landlord of this application as required by the legislation. The security deposit was not refunded within 15 days, the landlord has not applied to claim the deposit; and the doubling provision of section 38(6) therefore applies. I find that the amount of the deposit to be doubled is the sum of \$2,920.00 which is the amount the tenants agreed was the remainder of the deposit after deduction of rent that was due to the landlord. I grant the tenants' application and award them the sum of \$5,840.00. No interest has accrued on the original deposit amount. I do not allow the tenants' claim for payment of income received by the landlord. If the tenants were entitled to a remedy it would be for loss of quiet enjoyment not payment of income received by the landlord. The tenants were not granted exclusive use of the yard and the evidence that I heard concerning loss of quiet enjoyment was insufficient to justify an award of damages. The tenants are entitled to recover the \$50.00 filing fee for this application for a total claim of \$5,890.00 and I grant the tenants a monetary order in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that Court.

Dated: December 24, 2010.
