

DECISION

Dispute Codes MNDC, FF

Introduction

This conference call hearing was convened in response to the tenants' application for a Monetary Order for the return of double their security and pet damage deposits, and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the tenants entitled to a Monetary Order, and if so for what amount?

Are the tenants entitled to recover the filing fee?

Background and Evidence

There was no documentation attached to this application, and tenant T.M. testified that she submitted her evidence late. The parties did not dispute the following: that the tenancy started on April 16th, 2010 and ended on October 1st, 2010; that the monthly rent was \$750.00; that the tenants paid a security deposit of \$375.00 and a pet damage deposit of \$450.00; that the tenants provided the landlord with written notices to end tenancy on July 11th, 2010, and their forwarding address on September 30th, 2010.

Tenant T.M. testified that the landlord refused to do a walk-through and to complete a condition inspection report at the end of the tenancy. The landlord argued that the tenants would not allow him to do one. T.M. stated that the landlord asked the upstairs

tenant to falsely testify against them. The landlord testified that T.M. lied; that the tenants had pets; that they damaged the unit; and that the repairs will be no less than \$2000.00. The landlord did not submit any documentary evidence to support this claim.

Analysis

Section 19(1) of the *Residential Tenancy Act* provides that a landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of $\frac{1}{2}$ of one month's rent payable under the tenancy agreement. Since the rent was \$750.00, the combined sum of the security and pet damage deposits should not have exceeded that amount. I find that when the landlord received \$825.00 from the tenants, he accepted more than one month's rent contrary to the Act.

Section 38(1) of the Act provides that the landlord must return any security deposit or pet damage deposit, or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the landlord received the tenant's forwarding address in writing. Section 38(6) of the Act provides in part that if a landlord does not comply with his statutory obligation to return the security deposit within 15 days, the landlord must pay the tenant double the amount of the deposit.

Based on the parties' testimony, I accept that the tenants paid the landlord security and pet damage deposits totalling \$825.00. The tenants provided proper notice to end tenancy and written notice of their forwarding address; they did not consent to the landlord's retention of the security and pet damage deposits. The landlord did not return the deposits and did not file for dispute resolution. Accordingly, I find that the landlord is liable under section 38(6) to return double the amount for the sum of \$1650.00

Since they were successful, I find that the tenants are also entitled to recover the \$50.00 filing fee.

Conclusion

Pursuant to Section 67 of the Act, I award the tenants a monetary order totalling \$1700.00. This Order may be registered in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 28, 2011.

Residential Tenancy Branch

Now that you have your decision...

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If you do, visit the RTB website at www.rto.gov.bc.ca for information about:

- How and when to enforce an order of possession:
Fact Sheet RTB-103: Landlord: Enforcing an Order of Possession
 - How and when to enforce a monetary order:
Fact Sheet RTB-108: Enforcing a Monetary Order
 - How and when to have a decision or order clarified or corrected:
Fact Sheet RTB-111: Clarification or Correction of Orders and Decisions
- How and when to apply for the review of a decision:
Fact Sheet RTB-100: Review of a Residential Tenancy Branch Decision **(Please Note: Legislated deadlines apply)**

If you would like to personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

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- Victoria: 250-387-1602
- Elsewhere in BC: 1-800-665-8779

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