



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

**Dispute Codes**      MNDC, MNSD, FF

### **Introduction**

This hearing was convened by way of conference call to deal with the tenants' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for a monetary order for return of the pet damage deposit or security deposit; and to recover the filing fee from the landlord for the cost of this application.

Both tenants attended the conference call hearing however, despite being served with the Tenant's Application for Dispute Resolution and notice of hearing documents by registered mail on October 6, 2010, the landlord did not attend. All information and testimony provided has been reviewed and is considered in this Decision.

### **Issue(s) to be Decided**

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to a monetary order for return of the pet damage deposit or security deposit?

### **Background and Evidence**

This month-to-month tenancy began on August 1, 2008 and ended on August 31, 2010. Rent in the amount of \$1,200.00 per month was payable at the beginning of the tenancy, but was reduced to \$1,150.00 per month which was payable in advance on the 1<sup>st</sup> day of each month, and there are no rental arrears. At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$600.00.

The tenants testified that the landlord personally served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property, a copy of which was provided in

advance of the hearing. The notice does not contain a reason for ending the tenancy, however, the tenants also testified that they gave the landlord a notice on August 30, 2010 stating that they would be vacating the rental unit on September 8, 2010. A copy of that notice was also provided in advance of the hearing. They testified that the notice was served on the landlord by registered mail. The notice given by the tenants also contained the tenants' forwarding address in writing.

The landlord failed to provide the tenants with compensation equivalent to one month's rent as provided for in the *Act*. The landlord has also failed to return any portion of the security deposit to the tenants. The tenants further testified that they have not been served with an application by the landlord to retain the security deposit.

### **Analysis**

The *Residential Tenancy Act* is clear with respect to security deposits and pet damage deposits:

**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.

And further,

**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.

In the circumstances, I find that the landlord was deemed to be served with the tenants' notice containing a forwarding address on September 4, 2010. I further find that the

landlord has not applied for dispute resolution to claim against the security deposit and has not returned any portion of the security deposit to the tenants. Therefore, pursuant to Section 38, I must order the landlord to return double the amount of the security deposit to the tenants.

With respect to the tenants' application for the equivalent of one month's rent as compensation for the landlord's use of the property, I find that the landlord did not indicate to the tenants the reason(s) for issuing the notice. However, the tenants vacated the unit as requested by the landlord after providing the landlord with notice. Again, I refer to the *Residential Tenancy Act*:

**50** (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by

- (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and
- (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3) A notice under this section does not affect the tenant's right to compensation under section 51 [*tenant's compensation: section 49 notice*].

**51** (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is equivalent of one month's rent payable under the tenancy agreement.

In other words, if the landlord ends the tenancy for his or her use of the property, the landlord is required to give the tenants 2 months notice and the equivalent of one month's rent. I find, in the circumstances, that the landlord ended the tenancy effective November 1, 2010. I further find that the tenants exercised their right under Section 50 (1) (a) to vacate earlier, which does not negate the tenants' right to compensation of the equivalent of one month's rent.

### **Conclusion**

For the reasons set out above, I hereby grant a monetary order in favour of the tenants in the amount of \$1,200.00 for double the amount of the security deposit, plus interest in the amount of \$3.76, and \$1,150.00 as compensation pursuant to Section 51 (1). The tenants are also entitled to recovery of the \$50.00 filing fee and I grant an order pursuant to Section 67 of the *Residential Tenancy Act* in the total sum of \$2,403.76. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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 02, 2011.

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Residential Tenancy Branch