

## **DECISION**

### **Dispute Codes:**

MNSD; FF

### **Introduction**

This is the Tenants' application a monetary order for double the amount of the security deposit; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

### **Issues to be Decided**

- Are the Tenants entitled to a monetary order pursuant to the provisions of Section 38 of the Act?

### **Background and Evidence**

#### **Facts on which the parties agree:**

- The tenancy started on August 1, 2009.
- The Tenants paid a security deposit of \$600.00 at the beginning of the tenancy.
- The parties agreed to end the tenancy on October 6, 2010 and that rent for October would be paid on a per diem basis, totaling \$184.00.
- There was no move-in or move-out Condition Inspection Report completed by the parties.
- At the end of the tenancy, the parties agreed that \$184.00 would be deducted from the security deposit in payment of October's prorated rent.

- The Tenants agreed that the Landlord could also deduct from the security deposit \$150.00 for carpet cleaning and \$50.00 for some electrical work. This left a balance of \$216.00 remaining in the security deposit.

The Tenant testified that she served the Landlord with the Notice of Hearing documents by registered mail, sent on November 10, 2010. The Tenant provided a copy of the receipt and the tracking number in evidence.

The Tenant testified that she did not give the Landlords permission to keep any of the residual security deposit. There has been no previous order made by a dispute resolution officer allowing the Landlord to deduct a monetary award from the deposit held. The Tenant stated that she provided the Landlord with her forwarding address on October 11, 2010.

The Landlord was not certain when she received the Tenants' forwarding address, but agreed that she was provided with the Tenants' forwarding address in writing when she was served with a copy of the Tenants' Application in the Notice of Hearing documents.

### **Analysis**

The Landlord provided some documentary evidence and during the Hearing the Landlord gave testimony which was irrelevant to the Tenants' application. The Landlord has not filed an application. This matter was convened to hear the Tenants' application and therefore I have only recorded the testimony relevant to the Tenants' application.

A security deposit is held in a form of trust by a landlord for a tenant, to be applied in accordance with the provisions of the Act.

The Notice of Hearing documents, including the Tenants' Application for Dispute Resolution, were duly served on the Landlord in accordance with the provisions of

Section 89(1)(c) of the Act. Service in this manner is deemed to be effected 5 days after mailing the documents (November 15, 2010).

The tenancy ended on October 6, 2010. I find that the Landlord had received notification of the Tenants' forwarding address by November 15, 2010. Pursuant to the provisions of Section 38(1) of the Act, the Landlords had 15 days from receipt of the Tenants' forwarding address to either:

1. repay the residue of the security deposit; or
2. make an application for dispute resolution claiming against the deposit.

To date, the Landlord has not returned the residue of the security deposit, nor have she filed for dispute resolution against the deposit.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit. Therefore, the Tenants are entitled to a monetary award calculated as follows:

Security deposit	\$600.00
Less outstanding rent	<\$184.00>
Less damages agreed to	<u>&lt;\$200.00&gt;</u>
Residue	\$216.00

$$\$216.00 \times 2 = \$532.00$$

The Tenants have been successful in their application and are entitled to recover the cost of the \$50.00 filing fee from the Landlord.

### **Conclusion**

I hereby grant the Tenants a Monetary Order against the Landlord in the amount of

**\$582.00.** This Order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) 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: March 22, 2011.

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