



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### **Introduction**

This application was brought by the tenants on December 17, 2010 seeking a Monetary Order for return of rent, return of their security deposit in double on the grounds that the landlords did not return it within 15 days of the latter of the end of the tenancy or receipt of the tenants' forwarding address and recovery of the filing fee for this proceeding.

Despite having been served with the Notice of Hearing sent by registered mail on December 21, 2010, the landlord did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his absence.

### **Issues to be Decided**

This application requires a decision on whether the tenants are entitled to a Monetary Order for return of rent paid and return of the security deposit and whether the latter amount should be doubled.

### **Background and Evidence**

According to the tenant, this tenancy was set to begin on September 1, 2010 at a monthly rent of \$1,000. The tenants submitted a receipt showing that they had paid a security deposit of \$500 and the \$1,000 September rent August 31, 2010.

During the hearing, the tenant gave evidence that when he and his partner viewed the basement suite on August 30, 2010, it appeared quite suitable, although areas of the unit were covered by piles of the previous tenant's belongings in preparation for the move out.

The tenant stated that when they went to move in when the unit was empty, it became apparent that there was very heavy mold contamination in the suite and it had not been cleaned as verified by photographic evidence. In addition, the tenant submitted a photograph showing a hole dug adjacent to the worst areas, apparently to repair a leak in the sprinkler system that had apparently intruded into the unit.

The tenant contacted the landlord to advise he would not be proceeding with the tenancy and requesting return of the rent and the security deposit. The landlord was initially non-committal saying he had used the funds to pay the mortgage, then that he would return the deposit but not the rent, then failing to keep to the promise to return the deposit.

After a series of futile attempts to recover the funds, the tenants sent the landlord a registered letter on November 18, 2010 providing their forwarding address and again requesting the refund. When the tenants again received no response, they made the present application.

## **Analysis**

When the tenants paid the security deposit to the landlord, that payment constituted the consideration that is required to create a binding agreement. Even though the photographs show that the rental unit was in poor condition, I must find that the tenants had the opportunity to inspect it more thoroughly and ought to have done so. Therefore, I cannot order that the landlord return the September 2010 rent.

As to the security deposit, however, Section 38(1) of the *Act* provides that, within 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address, the landlord must return the security deposit or make application for dispute resolution to claim upon it.

Section 38(6) of the *Act* states that a landlord who does not comply with section 38(1), "must pay the tenant double the amount of the security deposit..."

In this matter, I find as fact that the landlord did not make application to claim on the deposit and that he did not return it within 15 days of end of the tenancy or receipt of the tenants' forwarding address.

Therefore, I find that the tenants are entitled to a Monetary Order for return of the \$500 deposit in double, plus recovery off the \$50 filing fee for this proceeding, for a total of \$1,050.00.

## **Conclusion**

The tenants' copy of this decision is accompanied by a Monetary Order for \$1,050, enforceable through the Provincial Court of British Columbia, for service on the landlord.

April 29, 2011