



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD; MNDC; FF

Introduction

This is the Tenants' application for a monetary order for double the security deposit paid to the Landlords and for compensation for loss of quiet enjoyment; and to recover the cost of the filing fee from the Landlords.

The parties gave affirmed testimony at the Hearing.

Issues to be Decided

- Are the Tenants entitled to a monetary order for double the security deposit?
- Are the Tenants entitled to compensation for loss of quiet enjoyment?

Background and Evidence

This tenancy started on April 14, 2007. Monthly rent was \$750.00. The Tenants paid a security deposit in the amount of \$375.00 on April 14, 2007. The tenancy ended on October 31, 2010.

There was no Condition Inspection Report done at the beginning or the end of the tenancy.

The Tenants gave the following testimony:

- On October 31, 2010, the parties met for a walkthrough at the rental unit. The Landlords said nothing about any damages to the rental unit and asked for the Tenants' forwarding address. The Tenants provided the Landlords with their forwarding address in writing and expected to get the full security deposit back.

- On November 15, 2010, the Landlords provided the Tenants with a cheque in the amount of \$151.96. The Landlords had added the accrued interest to the security deposit and then deducted \$162.50 for cleaning the fridge, bathroom, carpet and windows/doors; \$50.00 for replacing a mirror in the bathroom; and \$20.00 for money the Tenants owed the Landlords. The Tenants agree that they owed the Landlords \$20.00, but dispute all of the other deductions. The Tenants testified that they left the rental unit satisfactorily clean and did not damage the bathroom mirror.
- The Tenants seek compensation in the amount of \$200.00 for loss of peaceful enjoyment. They testified that within a few weeks of moving into the rental unit, the Landlords were screaming at each other and fighting 3 or 4 times a month. The Tenants did not provide the Landlords with written notice that they were being disturbed, but talked to the Landlords about it.

The Landlords gave the following testimony:

- The Tenants did not give the Landlords their forwarding address in writing on October 31, 2010.
- The fridge was dirty at the end of the tenancy because the Tenant was rushing out and didn't clean properly. The mirror was brand new at the beginning of the tenancy and at the end of the tenancy it was cloudy and had to be replaced.
- The Tenants lived in the rental unit for 3 ½ years and the Landlords did not think their normal talking was disturbing the Tenants. The Tenants also played loud music, but the Landlords accepted that as part of living.

Analysis

The Tenants did not provide sufficient evidence to support their claim for loss of peaceful enjoyment and this portion of their application is dismissed.

A security deposit is held in a form of trust by the Landlord for the Tenant and must be applied in accordance with the provisions of the Act.

The parties disagreed with respect to whether the Landlords received the Tenants written notification of their forwarding address on October 31, 2010. However, the Landlords returned a portion of the security deposit to the Tenants on November 15, 2010, so they knew where the Tenants were residing. Furthermore, the Landlords received written notification of the Tenants' forwarding address on the Tenant's Application when they were served with the Notice of Hearing documents.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit **in full**, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

A copy of Section 38 of the Act accompanies this decision.

The Tenants agreed that the Landlords could retain \$20.00 of the security deposit. The Landlord returned a portion of the security deposit but did not return the remainder of the security deposit within 15 days of receipt of the Tenant's forwarding address on their Application for Dispute Resolution, nor did the Landlord file for dispute resolution against the security 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 Tenant is entitled to a monetary order calculated as follows:

Double the residue of the security deposit	
(\$375.00 - \$20.00 = \$355.00)	\$710.00
Accrued interest	<u>\$9.46</u>

Subtotal	\$719.46
Less amount returned to the Tenants	<\$151.96>
TOTAL monetary award	\$567.50

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

Conclusion

I hereby provide the Tenants a Monetary Order against the Landlords in the amount of \$617.50. This Order must be served on the Landlords 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: April 06, 2011.

Residential Tenancy Branch