

## **Decision**

**Dispute Codes:** MNDC, MNSD

### **Introduction**

This hearing dealt with the tenant's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and compensation reflecting the double return of the security deposit. The tenant and her advocate participated in the hearing and gave affirmed testimony.

Despite being served by way of registered mail with the application for dispute resolution and notice of hearing (the "hearing package"), the landlord did not appear. Evidence submitted by the tenant includes the Canada Post tracking numbers for the registered mail. Further, the Canada Post website informs that the hearing package was "successfully delivered."

Subsequent to the original filing, the tenant updated the application by identifying 2 additional *styles of cause* for the landlord. The updated hearing package was served directly on the landlord by courier on June 23, 2011, by way of each of the 2 additional styles of cause, all to the same address.

### **Issues to be decided**

- Whether the tenant is entitled to any or all of the above under the Act, Regulation or tenancy agreement

### **Background and Evidence**

Pursuant to a written tenancy agreement signed on May 5, 2010, the fixed term of tenancy was from June 1 to December 1, 2010. Monthly rent for June of \$750.00, and a security deposit of \$375.00, were both collected near the start of tenancy.

A move-in condition inspection report was completed prior to the scheduled start of tenancy, and it documents a unit requiring significant cleaning and repairs. The landlord's agent informed the tenant on May 4, 2011 that the necessary cleaning and repairs would be completed by the time tenancy was to begin on June 1, 2011.

However, on May 31, 2010, or the day before tenancy was to begin, the landlord's agent indicated that the unit would not be ready for occupancy until June 4, 2011. In the meantime, as new renters were scheduled to move into the unit which the tenant was vacating, the tenant's former landlord permitted her to move her possessions out of her "old" unit and store them elsewhere. In the result, the tenant incurred a moving / storage cost in the amount of \$150.00.

Subsequently, the landlord's agent indicated that the unit would be ready for occupancy on June 7, 2010. In response, the tenant arranged for movers to bring her possessions to the unit on that day. However, upon arrival and after inspecting the unit, the tenant determined that the previously identified cleaning and repairs were far from having been completed. As a result, the tenant concluded that the unit was simply not a sufficiently clean, or otherwise suitable and safe place to live. Thereafter, she was assisted in relocating to alternate temporary accommodation until such time as a more permanent accommodation became available on June 10, 2010.

By letter to the landlord dated June 9, 2010, the tenant set out the sequence of events, as above. Further, in her letter the tenant advised the landlord of her decision to conclude the tenancy as a result of the landlord's "breach of the tenancy agreement." In this letter the tenant also provided the landlord with her forwarding address and requested that the landlord reimburse June's rent, in addition to the security deposit.

With the passage of time, as the tenant received no response from the landlord, by letter dated January 10, 2011 she once again set out her concerns and requested the reimbursement of June's rent and her security deposit. In her letter she also again provided the landlord with her forwarding address. To date, there has still been no response from the landlord.

In her application the tenant seeks compensation as follows:

\$750.00: June's rent

\$750.00: double the original security deposit (2 x \$375.00)

\$150.00: moving and storage costs (receipt provided in evidence)

\$187.50: "aggravated damages" calculated as the equivalent of 1 week's rent

**Total: \$1,837.50**

## **Analysis**

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca/](http://www.rto.gov.bc.ca/) Sections of the Act which are particularly relevant to the circumstances of this dispute are cited below.

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, and provides in part as follows:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(5) A landlord's obligations under subsection (1)(a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Section 7 of the Act speaks to **Liability for not complying with this Act or a tenancy agreement** and provides as follows:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 38 of the Act speaks to **Return of security deposit and pet damage deposit**, and provides in part as follows:

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.

Further, section 38(6) of the Act provides:

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.

Residential Tenancy Policy Guideline #16 speaks to "Claims in Damages," and provides in part:

In addition to other damages a dispute resolution officer may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Losses of property, money and services are considered "pecuniary" losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered "non-pecuniary" losses). Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behavior. They are measured by the wronged person's suffering.

Based on the documentary evidence and the affirmed / undisputed testimony of the tenant, I find on a balance of probabilities that the landlord failed to provide a unit which was in a state of decoration and repair that met the "health, safety and housing standards required by law," and that was "suitable for occupation" by the tenant. I further find that the tenant undertook to minimize her loss by fully informing the landlord of her concerns and seeking alternate accommodation in a timely fashion. Accordingly,

I find that the tenant has established entitlement to the reimbursement of rent for June 2010 in the amount of **\$750.00\***, costs incurred for moving / storage in the amount of **\$150.00\***, and aggravated damages in the amount of **\$187.50\***.

In the absence of any evidence that the landlord either returned the security deposit, or filed an application for dispute resolution within 15 days of the end of tenancy or the date when the landlord was informed in writing of the tenant's forwarding address, I find that the tenant has established entitlement to the double return of her security deposit in the amount of **\$750.00\*** (2 x \$375.00).

**Total entitlement:** **\$1,837.50.**

### **Conclusion**

Following from the above and pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$1,837.50**. Should it be necessary, this order may be served on the landlord(s), filed 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*.

**DATE:** July 26, 2011

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Residential Tenancy Branch