

## **DECISION**

### **Dispute Codes**

MNSD, FF  
MND, MNDC, MNSD, FF

### **Introduction**

This matter dealt with an application by the Tenants for the return of a security deposit, compensation equal to the amount of the security deposit due to the Landlords' alleged failure to return it as required by the Act and to recover the filing fee they paid for this proceeding. The Tenants also sought to amend their application to include a further claim to recover an overpayment of rent and other compensation related to an award made to the Landlords in a previous dispute resolution hearing for a washer and dryer. However, the Tenants advanced these new claims approximately a week prior to the hearing and in the circumstances I find that it would not be appropriate to amend their application on such short notice. Consequently, the Tenants will have to reapply for this relief within the time limits set out under s. 60 of the Act.

The Landlords applied for a loss of rental income, for compensation for damage or loss under the Act or tenancy agreement, to recover their filing fee for this proceeding and to keep the Tenants' security deposit. The Landlords admitted that in a previous dispute resolution hearing held on January 22, 2010, the Dispute Resolution Officer dismissed their applications for a loss of rental income and to retain the Tenants' security deposit. Consequently, I find that these matters are now *res judicata* and the Landlords are thereby barred from pursuing them again.

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

1. Are the Tenants entitled to the return of their security deposit and if so, how much?
2. Are the Landlords entitled to compensation and if so, how much?

### **Background and Evidence**

In April of 2008 the Landlords purchased the rental property from the Tenants who continued to reside in it and entered into a tenancy agreement with the Landlords. The Tenants moved out on September 20, 2009.

The Landlords' Claim:

When the Tenants vacated, they removed a new LG washer and dryer set from the property that were included in the contract of purchase and sale. The Tenants also removed parts from a hot tub and a hot tub cover. The Landlords filed a Small Claims action in the Provincial Court of British Columbia on October 26, 2009 for compensation for those and some other items. The Landlords said they purchased a used, replacement washer and dryer for the rental property at a cost to them of \$400.00. The Landlords admitted that they were compensated \$400.00 for the used washer and drier at a previous dispute resolution hearing held on January 22, 2010.

The Landlords also admitted that the Tenants returned the new washer and dryer set in April 2011 pursuant to a Provincial Court order. However, the Landlords now seek \$3,040.00 for the loss of use of the new washer and drier set for a period of 19 months. The Landlords claimed that they did not pursue their claim for the hot tub and cover during the Small Claims proceeding and therefore they sought compensation of \$1,650.00 for those items in these proceedings. The Tenants argued that the issue of the washer and dryer and hot tub were all dealt with in the Small Claims proceeding and formed part of a negotiated settlement.

The Tenants' Claim:

The Tenants said they gave the Landlords their forwarding address in writing by registered mail on October 6, 2009 and they provided a print out of a Canada Post online tracking system report showing that the Landlords received it on October 8, 2009. The Tenants said they did not give the Landlords written authorization to keep the security deposit and it has not been returned to them. The Tenants argued that the Landlords' right to keep the security deposit for a previous monetary award was extinguished because they did not complete a move out condition inspection report with them and that this was noted in the Decision issue following the previous dispute resolution hearing. The Tenants also argued that the Landlords lost the right to keep the security deposit because they did not make a claim for it within the time limits required under the Act (which the Landlords disputed).

**Analysis**

The Landlords' Claim:

I find that there is no jurisdiction under the Act to deal with the Landlords'/Purchasers' claim for compensation for the loss of use of a washer and dryer and for the cost to replace a hot tub and lid removed from the rental unit by the Tenants/Vendors. In particular, it is clear from the Landlords' Notice of Claim in their Small Claims action that these items formed part of the purchase price of the property under the Parties'

agreement for purchase and sale. In other words, I find that the intervening tenancy does not thereby transform the character of the issue from one under an agreement of purchase and sale to one arising out of a tenancy agreement. Furthermore, I find on a balance of probabilities that these items have been dealt with on their merits under the Landlords' Small Claims action and therefore I find that there is no jurisdiction for this reason as well. Consequently, this part of the Landlords' application is also dismissed without leave to reapply.

### The Tenants' Claim:

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he or she receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

I find that the tenancy ended on September 20, 2009 and that the Landlords received the Tenants' forwarding address in writing on October 8, 2009. Consequently, the Landlords had 15 days or ***no later than October 23, 2009*** to file an application for dispute resolution to make a claim against the Tenants' security deposit. However, the Landlords did not file their application to make a claim against the security deposit until October 29, 2009 and their claim for the deposit was dismissed on the grounds that they failed to complete a move out condition inspection report as required by s. 36(s) of the Act. I also find that the Tenants did not give the Landlords written authorization to keep their security deposit of \$1,100.00 and it has not been returned to them although the Landlords knew (as a result of the previous proceedings) that they were not entitled to keep it.

As a result, I find that pursuant to s. 38(6) of the Act, that the Landlords must return double the amount of the security deposit or \$2,200.00 to the Tenants with accrued interest of \$12.40 (on the original amount). As the Tenants have been successful in this matter, they are also entitled pursuant to s. 72(1) of the Act to recover from the Landlords the \$50.00 filing fee they paid for this proceeding.

### Conclusion

The Landlords' claim is dismissed in its entirety without leave to reapply. A Monetary Order in the amount of **\$2,262.40** has been issued to the Tenants and a copy of it must be served on the Landlords. If the amount is not paid by the Landlords, the Order may

be filed in the Provincial (Small Claims) Court of British Columbia 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: July 05, 2011.

---

Residential Tenancy Branch