

## **Review Decision**

**Dispute Codes:** MNSD, RPP, FF

### **Introduction**

This hearing was originally convened on June 21, 2011 in response to an application by the tenants; in their application the tenants sought a monetary order as compensation for the double return of the security and pet damage deposits combined/ the return of personal property / and recovery of the filing fee. While the tenants attended that hearing, the landlord did not. A decision and monetary order were issued in favour of the tenants dated June 21, 2011.

Thereafter, on July 7, 2011 the landlord filed an application to review the decision and order. In the result, by decision dated July 13, 2011, the landlord's application was granted, and the decision and order dated June 21, 2011 were suspended pending the outcome of this present hearing.

Both parties attended this present hearing and gave affirmed testimony.

### **Issues to be decided**

- Whether the tenants are entitled to any or all of the above under the Act

### **Background and Evidence**

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the tenancy began on July 15, 2008. A security and pet damage deposit in the combined total amount of \$785.00 was collected on July 11, 2008. When tenancy ended on March 15, 2011, monthly rent was \$1,575.00. There is no move-in condition inspection report in evidence.

The original landlord sold the property to the current landlord effective sometime in January 2011. On February 15, 2011 the tenants gave notice to the new landlord to end tenancy effective March 15, 2011. There is no move-out condition inspection report in evidence.

The tenants testified that by way of registered mail sent on April 5, 2011, they informed the landlord of their forwarding address and requested the return of their security and pet damage deposits. Evidence submitted by the tenants includes the Canada Post tracking number for the registered mail. The tenants testified that they undertook to determine the landlord's mailing address, as he had not provided it to them. During the

hearing the landlord confirmed that the tenants had used the correct address, however, he said he moved from that address sometime during March 2011. The landlord also confirmed that he had not informed the tenants of his change of address. Ultimately, the tenants' registered mail was returned to them.

Included with his written submission for the review hearing, the landlord provided photographs allegedly showing damage to the unit and to the yard as a result of the tenancy. The landlord acknowledged, however, that he had not filed his own application for dispute resolution. During the hearing the tenants testified that they had not been served with these photographs or any other documentation submitted by the landlord.

### **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)

Section 13 of the Act speaks to **Requirements for tenancy agreements**, and provides in part as follows:

13(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

(e) the address for service and telephone number of the landlord or the landlord's agent;

There is no evidence that following the landlord's purchase of the unit in January 2011, he amended the tenancy agreement to reflect a change in the landlord's "address for service." Further, as stated earlier, neither did the landlord inform the tenants of his change of address which took place in March 2011.

Section 90 of the Act speaks to **When documents are considered to have been received**, and provides in part, that a document sent by mail is deemed to be served "on the 5<sup>th</sup> day after it is mailed." Following from all of the above, I find that the tenants undertook reasonable efforts to inform the landlord of their forwarding address by registered mail. I find that the tenants ought not to be penalized for the landlord's failure to properly inform them of his address for service at the start of his role as landlord, or later when he moved. I find that pursuant to section 90 of the Act, the tenants' letter instructing the landlord of their forwarding address is deemed served.

Section 38 of the Act addresses **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.

Section 82 of the Act addresses **Review of director's decision or order**, and provides in part:

82(3) Following the review, the director may confirm, vary or set aside the original decision or order.

Following from all of the above, the original decision and order are hereby varied. Specifically, I find that the tenants have established entitlement to a claim of \$1,625.60. This is comprised of the double amount of the security and pet damage deposits combined of \$1,570.00 (2 x \$785.00), plus interest calculated on the original amount of the security and pet damage deposits of \$5.60, and the \$50.00 filing fee.

## **Conclusion**

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$1,625.60**. Should it be necessary, this order may be served on the landlord, 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: August 17, 2011

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Residential Tenancy Branch