

## **DECISION**

### **Dispute Codes:**

MNSD; MNDC

### **Introduction**

This is the Tenants' application for a monetary order for double the security deposit paid to the Landlord and for compensation for damage or loss under the Act, regulation or tenancy agreement.

The parties gave affirmed testimony at the Hearing.

It was established that the Tenants' advocate served the Landlord with the Notice of Hearing documents, by registered mail sent September 8, 2011. The Tenants did not file any additional documentary evidence, nor did they serve the Landlord with any additional documentary evidence.

The Landlord provided late documentary evidence to the Residential Tenancy Branch on November 22, 2011, but did not serve the Tenants with his documentary evidence and therefore it was not considered in this Decision.

### **Issues to be Decided**

- Are the Tenants entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38 of the Act?
- Are the Tenants entitled to compensation for overpayment of rent in the amount of \$4,500.00?

### **Background and Evidence**

There was no written tenancy agreement between the parties, but they agreed that the tenancy started on May 1, 2008. The Tenant testified that monthly rent was \$1,400.00. The Landlord testified that monthly rent was \$1,350.00. The Tenant testified that he paid a security deposit and a pet damage deposit, totaling \$1,400.00 at the beginning of the tenancy. The Landlord testified that no security deposit or pet damage deposit was paid. The parties agreed that the tenancy ended in February, 2011. There was no condition inspection report completed at the beginning or the end of the tenancy.

RC testified that he saw the Tenant give the Landlord \$1,400.00 in cash for the security and pet damage deposits. He stated that monthly rent was \$1,400.00.

The Tenant testified that the Landlord received his forwarding address in writing on May 25, 2011, by registered mail. He stated that to date the Landlord has not returned the security and pet damage deposits and so he is seeking compensation equivalent to double the amount of the deposits. The Tenant testified that when he asked the Landlord to return the deposits, the Landlord pulled a gun on him and the police were called.

The Landlord reiterated that no deposits were ever made by the Tenant. The Landlord stated that the Tenant was lying when he said he pulled a gun. He stated that he talked about having a gun, but did not pull a gun on the Tenant. The Landlord stated that the police came to his house with four or five police cars and searched his house and found a family gun. He stated that he was charged with possession of a handgun and got a fine.

The Tenant's advocate testified that he sent the registered mail letter that included the Tenant's forwarding address to the Landlord on May 25, 2011. The Tenant's advocate read the letter aloud that he wrote to the Landlord. The Tenant's advocate provided the tracking numbers for the registered mail. The Tenant's advocate testified that within a week of mailing the letter, the Landlord paid an unannounced visit to his office and acknowledged that the Tenant had paid the deposits, but stated that he was not going to return any of it to the Tenant.

The Landlord acknowledged attending the Tenant's advocate's office, but denied acknowledging that the Tenant had paid the deposits.

The Tenant testified that he was away for 6 months from April 2010 to September, 2010, and that he gave the Landlord cash in the amount of \$7,400.00 to cover rent payments while he was gone. The Tenant testified that RC and KS had witnessed him paying the cash to the Landlord. The Tenant testified that the Landlord did not provide him with a receipt and that he never provided receipts for cash payments.

The Tenant testified that he had an arrangement with the Landlord that if KS and RC paid their half of the rent to the Landlord while the Tenant was away, then the Landlord would refund him that portion of the prepaid rent. The Tenant testified that the KS and RC paid \$750.00 a month to the Landlord for the whole 6 month period he was gone, but the Landlord did not refund the Tenant any money. The Tenant seeks a monetary award in the amount of \$4,500.00 for overpaid rent ( $\$750.00 \times 6 = \$4,500.00$ ).

The Landlord testified that the Tenant was away because he was in jail. The Landlord denied that he owed any money to the Tenant for overpaid rent. He stated that he had to borrow money to repair the rental unit after the Tenant moved out and that it cost him \$2,700.00 to make the repairs.

### **Analysis**

This Hearing was challenged by the following reasons:

- the degree of animosity between the parties;
- the parties could not agree on the amount of rent that was paid, or whether the Tenant paid a security and pet damage deposit; and
- the Landlord did not comply with the Residential Tenancy Act and put the Tenancy Agreement in writing and provide receipts for rent paid in cash.

Both parties had credibility issues. The Tenant stated in the Hearing that he had provided the Landlord with cash for the 6 months rent while he was incarcerated. He stated that the other occupants had witnessed this transaction. However, in his Application for Dispute Resolution, the Tenant wrote that he “had given the landlord a series of negotiable post-dated cheques; 6 in number and each in the amount of \$1,400.00 to cover the rent during my time away from the rental property.” Furthermore, if KS and RC had seen the Tenant provide the Landlord with 6 month’s rent in advance, it doesn’t make sense that they would also provide the Landlord with a portion of the rent for that time period. It would make more sense for KS and RC to pay the Tenant directly for their portion of the rent payments, or for the Tenant to pay KS and RC his portion for the six months he was away.

The Landlord disputed that the Tenant had paid a security and pet damage deposit. However, the Tenant’s advocate submitted that the Landlord had acknowledged that he was holding the deposits and would not be returning them. The Landlord stated that it cost him approximately double the amount of the deposits to repair damages left by the Tenant at the end of the tenancy. The Landlord also denied threatening the Tenant with a gun, but he admitted that he was arrested, charged and convicted of possession of a firearm.

I accept the Tenant’s advocate’s testimony that the Landlord acknowledged to him that the Tenant paid a security deposit and a pet damage deposit in the total amount of \$1,400.00. I accept the Tenant’s advocate’s testimony that he sent the Tenant’s forwarding address to the Landlord by registered mail on May 25, 2011.

I find that, contrary to the provisions of Section 38(1) of the Act, the Landlord did not return the deposits to the Tenant within 15 days of receipt of the Tenant's forwarding address, or file for dispute resolution against the deposits within 15 days of receipt of the Tenant's forwarding address.

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 and/or pet damage deposit.

Therefore, I find that the Tenant is entitled to a Monetary Order against the Landlord for double the amount of the deposits, in the amount of **\$2,800.00**.

I find that the Tenant did not provide sufficient credible evidence that he had overpaid rent in the amount of \$4,500.00 and this portion of his application is dismissed without leave to reapply.

### **Conclusion**

I hereby provide the Tenant a Monetary Order in the amount of **\$2,800.00** for service upon the Landlord. This Order 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: December 20, 2011.

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Residential Tenancy Branch