

DECISION

Dispute Codes: **Landlord:** MND, MNDC and FF
 Tenants: MNSD, MNDC and FF

Introduction

These applications were brought by both the landlords and the tenants.

By application received September 23, 2010, the tenants seek return of their security deposit in double on the grounds that the landlords did not return it within the latter of 15 days of the end of the tenancy or receipt of the tenants' forwarding address.

By application received on December 15, 2010, the landlords seek a Monetary Order for damage to the rental unit and loss of rent as a result of the tenants leaving the fixed term agreement early.

Issues to be Decided

The tenants' application requires a decision on whether the tenants are entitled to return of their security deposit and whether the amount should be doubled.

The landlords' application requires a decision on whether they are entitled to an award for loss of rent and for damages, taking into account whether damages are proven, whether it is proven they were attributable to the tenants and whether the amounts claimed are proven and reasonable.

Background, Evidence and Analysis

This tenancy began on May 15, 2009 under a fixed term rental agreement, renewed for June 1, 2010 with an end of tenancy date of May 31, 2011. Rent was \$1,750 and the landlords hold a security deposit of \$825 paid on April 20, 2009. The tenants gave notice on July 28, 2010 and left tenancy on August 31, 2010.

As to the tenants' claim for return of the security deposit; the parties concurred that the deposit has not been returned and that the tenants advised the landlords of their forwarding address by letter of September 6, 2010.

The tenants agreed that the person they hired to do patching of the walls had not completed the sanding and that their carpet cleaner had missed one area. On those matters, they agreed the landlord should retain \$100 and \$40 respectively from the deposit..

Section 38(1) of the *Act* provides that, within 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address, the landlord must return the security deposit and pet damage deposits or make application to claim upon them.

Section 38(6) of the *Act* states that a landlord who does not comply with section 38(1), "must pay the tenant double the amount of the security deposit..."

In this matter, I must find as fact that the landlords did not make application to claim on the deposit or return it within 15 days of receiving the tenant's forwarding address.

Therefore, I find that the tenants are entitled to return of the contested portion of the security deposit in double, after the agreed upon charge for damages charge is deducted.

As the tenants contributed to this dispute by leaving the fixed term tenancy early, I decline to award their filing fee.

Thus, I find that the landlords owe to the tenants an amount calculated as follows.

Security deposit	\$ 825.00
Less amounts agreed to for wall repairs & carpet cleaning	- 140.00
Sub-total of contested portion of security deposit	\$ 685.00
To double the contested portion of the deposits	685.00
TOTAL	\$1,370.00

As to the landlords' claim for loss of rent, the landlord gave evidence that a new tenant did not move in to the rental unit until November 1, 2010 as a result of the tenants' breach of the fixed term agreement. Therefore, the landlords claim loss of rent for September and October of 2010.

I find that the tenants breached the one-year fixed term rental agreement by leaving after three months.

Section 7(1) of the *Act* provides that a party suffering a loss due to a breach by the other is entitled to compensation for that loss by the non-compliant party. However, section 7(2) of the *Act* requires that the party experiencing the loss, must do whatever is reasonable to minimize that loss.

In this matter, the landlords' evidence shows that they did not begin to advertise until mid October 2010, over two months after having received notice and over a month after the tenancy ended. The landlord was able to get a new tenant for November 1, 2010, lending substance to the tenants' claims that there need not have been a loss of rent if the landlord had advertised earlier.

In addition, the tenants gave evidence that the major reason they left the tenancy early was that the rental unit was listed for sale which called into question whether the landlord intended to honour the fixed term agreement or whether she would have given the tenants early notice.

I find that the landlords' did not take reasonable measures to minimize the loss; nevertheless, I find that the landlords are entitled to a nominal damages of \$200 for the tenants' breach of the fixed term agreement.

As to the landlord's claim for damages, I find that the \$140 conceded by the tenants to be fair and reasonable compensation for damage to the walls.

The tenants gave uncontested evidence that the rental unit had not been painted for eight years and that any painting the landlord did was a result of normal wear and tear and in aid of enhancing the possibility of a sale. As the useful life a interior paint in a rental unit is deemed to be four years, I make no award on this claim.

The landlords also submitted a photo of a mark on a bathtub in a second bathroom and submits an estimate dated January 6, 2011 for the cost of replacing the tub and related tile work. The tenants stated that the mark was there when they first moved in and that it is sufficiently small that the reasonable remedy is to simply do a cosmetic touch-up.

In the absence of move-in/move-out condition inspection reports, I must find that the landlord has not proven that the tenants marked the bathtub and I dismiss the claim.

Conclusion

The tenants are entitled to a monetary award for \$1,370 comprised of double the contested portion of their security deposit.

The landlords are entitled to a nominal award of \$200 due to the tenants' breach of the fixed term agreement.

The tenants' copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for \$1,170 (the award to the tenants less the award to the landlords) for service on the landlords.

January 17, 2011