



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes MNSD, MNDC, FF

Introduction

This matter dealt with an application by the tenant for a monetary order in relation to the return of a security deposit and for a deposit for security access devices.

The tenant appeared at the hearing, which was held via teleconference, but there was no appearance by the landlord. The tenant gave evidence that he had served the landlord the application for dispute resolution and the notice of hearing, via registered mail sent on July 16, 2008. The tenant provided a Canada Post registered mail tracking number, which verified that the registered mail was received on July 17, 2008. I am satisfied that the landlord was properly served the notice of the hearing and find that the hearing will continue in the absence of the landlord.

Issues(s) to be Decided

Is the tenant entitled to a monetary order for return of deposits, and if so in what amount?

Background and Evidence

The tenant at the hearing gave evidence that the tenancy commenced in May of 2007 and concluded in May 2008. The tenant at the start of the tenancy paid a security deposit to the landlord of \$400.00 and an additional deposit of \$200.00 for door security access devices.

At the end of the tenancy, the tenant states that he gave the building manager his forwarding address and requested return of the security deposit. In addition the tenant states that he returned the access devices and also requested the return of the \$200.00 deposit for those devices.

On June 18, 2008 the tenant sent a letter via registered mail to the landlord again requesting the return of the deposits. The Canada Post tracking number supplied shows that the letter was sent on June 18, 2008 and received on June 19, 2008. The tenant also states that he has called the landlord several times about this issue and to this date the deposits have not been returned as requested.



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Analysis

I quote from the Residential Tenancy Act s. 38:

Return of security deposit and pet damage deposit

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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2)



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[landlord failure to meet end of tenancy condition report requirements].

- (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.

- (7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

- (8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [service of documents] or give the deposit personally to the tenant.

Based upon the evidence before me, I find that the landlord has not complied with s. 38(1), and therefore the tenant is entitled to a return of double the security deposit pursuant to s. 38(6)(b).

The tenant is also entitled to return of the deposit for the return of the security access devices.

Conclusion

I find that the tenant is entitled to a monetary order as detailed below:

Original Security Deposit	\$400.00
Interest on Original Security Deposit	\$ 8.42
Security Deposit on Access Devices	\$200.00
Additional Amount as per s. 38(6)(b)	\$400.00
Filing Fee	\$ 50.00
Total	\$1058.42

I order that the landlord pay the tenant the amount of \$1058.42. The order may be filed with and enforced as an order of the Provincial Court of British Columbia.

Dated: September 22, 2008

Dispute Resolution Officer