



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes MNSD, FF

Introduction

This matter dealt with an application by the tenants for return of the security deposit following the end of a tenancy.

The landlord and the tenants were both represented at the hearing which was held via teleconference.

Issues(s) to be Decided

Are the tenant's entitled to return of their security deposit and if so in what amount?

Background and Evidence

All parties present at the hearing agreed to the following facts:

- (a) The tenancy commenced on February 1, 2006 and a security deposit of \$450.00 was paid at that time.
- (b) The tenancy ended on June 30, 2008 when the tenants vacated the property.
- (c) The tenants provided the landlord with their forwarding address, in writing, no later than June 30, 2008.
- (d) That the security deposit of \$450.00 has not been returned to the tenants.

I quote from s. 38 of the Residential Tenancy Act:

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

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- 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) [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.



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At the hearing, the landlord gave evidence that she had retained the security deposit in order to repair and clean the rental unit. The landlord acknowledged that she did not have written permission from the tenant's to retain all or any of the security deposit, nor had she filed an application for dispute resolution to retain the deposit.

Analysis

I find that the landlord has not complied with the provisions of s. 38 (1) of the Residential Tenancy Act and that pursuant to s. 38(6), the landlord must pay the tenants double the amount of the security deposit.

Conclusion

I order that the landlord pay to the tenants, the security deposit plus interest in the amount of \$463.88 and an additional amount of \$450.00. The tenants are also entitled to recover the filing fee for this application in the amount of \$50.00. The total of the monetary order payable to the tenants is \$963.88.

The order may be filed with and enforced as an order of the Provincial Court of British Columbia.

Dated: September 24, 2008

Dispute Resolution Officer