



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: MNSD, FF

Introduction

This application was brought by the tenants seeking return of their security deposit under section 38 of the *Act* after the landlord did not return it or make application to make claim on it within 15 days of the end of the tenancy.

Despite being served with the Notice of Hearing by registered mail sent July 21, 2008, the landlord did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his absence.

As a matter of note, the landlord did not provide the tenants with a mailing address and the tenant gave evidence that he had shared their mail box at the rental unit for the duration of the tenancy.

Issue(s) to be Decided

This application requires a decision on whether the tenants are entitled to return of the security deposit and if so, singly or in double.

Background and Evidence

This tenancy began October 1, 2007 as a fixed term tenancy set to end on October 1, 2008. Rent was \$1000 per month and the landlord holds a security deposit of \$500 paid on October 1, 2007.

On March 30, 2008, the tenants gave the landlord notice by email that they would be vacating the rental unit by April 30, 2008, expressing regret that circumstances force them to leave the fixed term agreement early and pledging to assist the landlord in finding new tenants. The landlord responded March 31, 2008 demanding two months notice. By email of April 9, 2008, the landlord advised the tenants that he had arranged for a friend to show the apartment and the tenants replied that they would be leaving April 26, 2008 and would leave the apartment clean and empty.

On May 19 and 28, 2008, the tenants provided the landlord with their forwarding address and requested return of their security deposit. The latter email also attached the Residential Tenancy Branch information sheet on the proper methods of dealing with the security deposit at the end of a tenancy. The landlord replied on May 29, 2008 refusing to return the deposit, with the concluding comment, "get lost."

Section 38(1) of the *Act* states that, unless the tenants give written agreement otherwise, the landlord must, within 15 days of the latter of the end of the tenancy or receiving the tenants' forwarding address, the landlord must either return the security deposit or make application for dispute resolution to claim against it. I have no evidence that the landlord did either.

Section 38(6) of the *Act* says that if the landlord does not comply with section 38(1), the landlord may not claim upon the security deposit and must return it in double.

Analysis

I find that the landlord has failed to comply with section 38(1) of the *Act*.

Conclusion

Therefore, I find that the tenants are entitled to return of their security deposit in double as prescribed by section 38(6) of the *Act* plus interest on the initial deposit, plus recovery of the filing fee for this proceeding as follows.

Security deposit	\$500.00
Interest (October 1, 2007 to date)	7.34
To double security deposit	500.00
Filing fee	50.00
TOTAL	\$1,057.34

Thus, the tenant's copy of this decision is accompanied by a Monetary Order for \$1057.34, enforceable through the Provincial Court of British Columbia for service on the landlord.

The landlord remains at liberty to make application for a Monetary Order for damages or loss of rent if such losses were incurred.

September 22, 2008
