



# **Dispute Resolution Services**

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

## **DECISION**

**Dispute Codes:** FF, MNSD

### **Introduction**

This matter dealt with an application by the tenants for a monetary order in regards to the return of a security deposit.

Both the tenants and the landlords appeared at the hearing and were afforded the opportunity to present evidence. I advised both parties that I would consider their oral evidence as well as their written submission which had been presented prior to the hearing, in reaching my decision.

### **Issue(s) to be Decided**

Are the tenants entitled to a monetary order for the return of a security deposit, and if so in what amount?

### **Background and Evidence**

The facts of this tenancy are as follows:

- the tenancy commenced on October 1, 2007 and there is a written tenancy agreement
- the monthly rent payable is \$3000.00

- at the start of the tenancy the tenants were required to pay an amount of \$6000.00, with \$3000.00 of that amount being designated as a damage deposit
- the tenants vacated the rental unit on or about May 31, 2008
- the tenants sent the landlords a forwarding address in writing via registered mail on May 30, 2008 and the landlord acknowledges receiving that document.
- as of the date of this hearing, the damage deposit has not been returned to the tenants

The evidence of the landlords at the hearing is that there was an agreement in the tenancy agreement that the tenants would pay no rent for the first month of the tenancy, conditional upon them completing repairs to the unit. The landlord's states that the repairs were never completed and that there were also additional damages done to the rental unit. The landlord states that they retained the \$3000.00 damage deposit in lieu of the unpaid rent, and as such they are not required to pay anything to the tenant.

The landlord does acknowledge receiving the tenants forwarding address in writing, via registered mail, but states that there was no written request for the return of the damage deposit.

The evidence presented by the tenant is that there was no move out inspection and that the landlord has not filed an application for dispute resolution to retain the security deposit.

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 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.*

## **Analysis**

I find that based upon the evidence before me, that the landlord did receive the tenant's forwarding address in writing, on or about May 30, 2008, via registered mail. The landlord has not applied for dispute resolution nor have they received the tenant's written consent to retain any or all of the deposit.

The landlord has not complied with the requirements of s. 38 (1) noted above and is therefore pursuant to s. 38 (6) required to pay an amount equal to double the security deposit, to the tenants.

## **Conclusion**

I find that the landlord must return to the tenants, the amount of the security deposit, plus interest in the amount of \$ 3048.52. In addition the landlord must pay the tenants a further amount under s. 38 (6) of \$3000.00. The tenants are also entitled to recover the filing fee for the cost of this application in the amount of \$100.00.

I grant the tenants a monetary order in the amount of \$ 6148.52, payable forthwith. The order may be filed with and enforced as an order of Provincial Court of British Columbia.

Dated: October 28, 2008