



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 matter dealt with an application by the tenant for the return of a security deposit in relation to the end of a tenancy.

The tenant appeared at the hearing, but there was no appearance by the landlord. The tenant gave evidence that she had served the landlord the notice of hearing and the application for dispute resolution via registered mail sent August 6, 2008. Pursuant to s. 90 of the Residential Tenancy Act, documents served via mail are deemed to have been served 5 days after they were mailed. The landlord is therefore deemed to have been served on August 11, 2008.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit?

Background and Evidence

The tenant gave evidence that the tenancy commenced in June 2006 and that she paid a security deposit of \$350.00. The tenancy ended on June 30, 2008 when the tenant vacated the rental unit. The tenant states that she had paid her rent to the landlord's daughter who lived in the same building and that on June 30, 2008 she gave the tenant's daughter, as agent for the landlord, her forwarding address. As of this date she has not heard from the landlord and has not had her security deposit returned.

Analysis

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

I find that the landlord has not complied with s. 38(1) and that pursuant to s. 38(6)(b), that the landlord **must** pay the tenant double the amount of the security deposit.

Conclusion

I order that the landlord must pay the tenant the amount of the original security deposit plus interest in the amount of \$360.35 and an additional an amount of \$350.00. The

landlord must also pay the tenant the cost of filing this application in the amount of \$50.00.

The tenant is entitled to a monetary order in the amount of \$760.35. This order may be filed with and enforced as an order of the Provincial Court of British Columbia.

Dated: October 3, 2008