



Dispute Resolution Services

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

DECISION

Dispute Codes: MNSD, MNDC

Introduction

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

Both the landlord and the tenant were present at the hearing which was held via teleconference. Both parties were afforded the opportunity to present evidence and I advised both parties that I would also consider any written documents that had been submitted prior to the hearing in reaching my decision.

Issue(s) to be Decided

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

Background and Evidence

Both parties agree on the following facts:

- that the tenancy commenced on January 15, 2008 at a monthly rent of \$1050.00
- that a security deposit was paid by the tenants in the amount of \$525.00 at the start of the tenancy
- that on June 26, 2008 the tenants sent the landlord an email which included their forwarding address
- that on July 1, 2008 the tenants vacated the property

- that the tenants have not received a return of their security deposit from the landlord
- 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 the landlord has failed to comply with s. 38 (1) as noted above, and as such the tenants are entitled to an amount equal to double the security deposit pursuant to s. 38(6).

Conclusion

I order that the landlord must return to the tenants, the security deposit plus interest in the amount of \$ 539.05 plus an additional amount of \$525.00. I grant the tenants an order in the amount of \$ 1064.05, payable forthwith. The order may be filed with and enforced as an order of the Provincial Court of British Columbia.

Dated: October 23, 3008