



Dispute Resolution Services

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

DECISION

Dispute Codes: MNSD

Introduction

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

Both the landlord's agent and the tenant appeared at the hearing which was held via teleconference. By mutual consent, the name of the property manager was removed from the application and replaced by that of the corporate landlord.

Issue(s) to be Decided

Is the tenant entitled to return of the security deposit, and if so in what amount?

Background and Evidence

The tenant's evidence is that the tenancy commenced on September 1, 2007 and that a security deposit was paid in the amount of \$475.00 at that time.

The tenant vacated the property on August 31, 2008 after giving the landlord written notice on July 11, 2008. The tenant states that she gave the landlord her forwarding address in writing with the notice on July 11, 2008 and again on August 31, 2008. The tenant has not received a refund of the security deposit as of the date of this hearing.

The landlord's agent at the hearing does not dispute the tenant's evidence and states that the deposit was not refunded as they are pursuing action against the tenant in Small Claims Court for other damages related to the tenancy. The landlord has not filed an application for dispute resolution pursuant to the *Residential Tenancy Act*.

I quote from the 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 not complied with s. 38 (1) as noted above and as such the tenant is entitled under s. 38 (6) to a return of an amount equal to double the security deposit.

Conclusion

I find that the landlord must return the security deposit plus interest in the amount of \$483.18 plus an amount of \$475.00 to the tenant forthwith. I grant the tenant a monetary order in the amount of \$ 958.18. This order may be filed and enforced as an order of the Provincial Court of British Columbia.

Dated: October 23, 3008