



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 at the end of a tenancy. The tenant also seeks to recover the filing fee for the cost of this application.

At the hearing, which was held via teleconference, the tenant appeared but there was no appearance by the landlord. The tenant gave evidence that the application for dispute resolution and the notice of hearing were sent to the landlord via registered mail on October 24, 2008. Service via registered mail is deemed to be complete 5 days after mailing, and I find that the landlord has been duly served effective October 29, 2008. Failure of the landlord to accept the registered mail is not a factor in determining that service has been carried out.

Issue(s) to be Decided

- Is the tenant entitled to a monetary order for the return of the security deposit?

Background and Evidence

The evidence of the tenant is as follows:

- the tenancy commenced on July 1, 2008
- the tenant paid the landlord a security deposit of \$600.00 at the start of the tenancy

- the tenants vacated the rental unit on September 28, 2008
- the tenant gave the landlord her forwarding address in writing on September 28, 2008
- the tenant had a discussion with the landlord at that time about the security deposit and the landlord agreed to forward a cheque to the tenant
- the tenant sent the landlord an email on October 16, 2008 again giving her forwarding address in writing
- the landlord has advised the tenant that the deposit will not be returned until she has new tenants in the rental unit
- as of the date of this hearing the security deposit has not been returned

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 have considered the oral evidence of the tenant as well as the written documentation that has been submitted in reaching my decision. The tenant's evidence is undisputed. I find that the landlord has failed to comply with s. 38(1) above, in that she has not returned the security deposit within 15 days, and there is no evidence before me that the landlord has filed an application for dispute resolution.

In finding that the landlord has breached s. 38(1), I find that pursuant to s. 38(6), that the landlord **must** pay the tenant an amount equal to double the security deposit. I further find that the tenant is entitled to recover the filing fee of \$50.00 for the cost of this application.

Conclusion

I order that the landlord must return to the tenant the security deposit plus interest valued at \$ 603.69 and a further amount of \$600.00. I also order the landlord to pay the tenant the filing fee of \$50.00.

I grant the tenant a monetary order in the amount of \$ 1253.69, which must be paid forthwith. This order may be filed with and enforced as an order of the Provincial Court of British Columbia.

Dated: November 27, 2008

