

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 for the return of a security deposit at the end of a tenancy.

The tenant appeared at the hearing which was held via teleconference, but there was no appearance by the landlord. The tenant gave evidence that the landlord had been served the application for dispute resolution and the notice of hearing via registered mail, sent October 20, 2008. Service by registered mail is deemed to be completed 5 days after mailing, and I am satisfied that the landlord has been properly served as required on or about October 25, 2008.

Issue(s) to be Decided

Is the tenant entitled to a return of the security deposit related to the end of the tenancy?

Background and Evidence

The tenant gave evidence as follows:

- the tenancy commenced on November 1, 2007 at a monthly rent of \$750.00
- the tenant paid a security deposit of \$375.00 at the start of the tenancy
- the tenancy ended on or about July 1, 2008 when the tenant vacated the rental unit
- the tenant gave the landlord her forwarding address in writing via email near the end of July 2008, and requested the return of the security deposit.

- the tenant sent the landlord a letter via registered mail on August 6, 2008 requesting the return of the security deposit.
- 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 find that the landlord received the tenant's forwarding address in writing at or near the end of July 2008. The landlord had a period of 15 days from that date to either return the security deposit or to file an application for dispute resolution. I have no evidence before me that the landlord has filed an application.

I find that based upon the evidence before me that the landlord has failed to comply with s. 38(1) above and as such, pursuant to s. 38(6), the tenant is entitled to the return of an amount equal to double the security deposit. The tenant is also entitled to be paid interest on the original amount of the security deposit.

Conclusion

I find that the landlord must return the security deposit plus interest in the amount of \$381.00 and a further amount of \$375.00 for a total of \$756.00. This amount must be paid forthwith, and the order may be filed with and enforced as an order of the Provincial Court of British Columbia.

Dated: November 24, 2008