

# 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 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 application for dispute resolution and the notice of hearing was served to the landlord via registered mail, sent on November 4, 2008. A check of the Canada Post tracking system confirms that the landlord received the documents on November 7, 2008 and that he had signed to acknowledge receipt. I find that the landlord has been duly served, and that the hearing would continue in his absence.

## **Issue(s) to be Decided**

Is the tenant entitled to a monetary order, and if so in what amount?

## **Background and Evidence**

The basic facts of the tenancy are as follows:

- the tenancy commenced on July 1, 2008
- the monthly rent payable was \$1500
- a security deposit of \$750.00 was paid at the start of the tenancy
- the tenants gave notice to end the tenancy on August 17, 2008 to be effective at the end of September 2008

- the tenants vacated the rental unit on September 5, 2008 and paid rent for the entire month of September 2008
- no formal written move out inspection was conducted
- the tenant received a cheque from the landlord in the amount of \$500.00 on or about October 9, 2008 as well as a written statement from the landlord
- the written statement from the landlord shows deductions from the security deposit of \$150.00 for lawn cutting, \$50.00 for weed whacking and \$50.00 for removal of yard rubbish and a balance of \$500.00 refunded.
- the landlord continues to hold the \$250.00 deducted from the security deposit
- the tenant still holds the landlord's cheque in the amount of \$500.00 as it was not dated

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.

In reviewing the testimony of the tenant as well as the written submissions, I find no evidence that the landlord has filed an application for dispute resolution, nor did the landlord have the written permission of the tenant to retain any or all of the security deposit. I further find that the landlord had the forwarding address of the tenant at the latest date of October 9, 2008 as evidenced by the landlord's letter to the tenant of that date.

In summary I find that the landlord has failed to comply with s. 38(1) and as such the tenant **must** receive an amount equal to double the security deposit pursuant to s. 38(6) of the *Residential Tenancy Act*. I find that the cheque in the amount of \$500.00 that was sent to the tenant which is not dated is non-negotiable and such does not constitute payment to the tenant as required. I order that the tenant is to return the non-negotiable cheque to the landlord forthwith.

I find that the tenant has established a valid claim as follows:

Security Deposit	\$750.00
Interest	\$ 4.95
Amount Equal to Double the Security Deposit	\$750.00
<b>Total Payable to the Tenant</b>	<b>\$1504.95</b>

### **Conclusion**

I order that the landlord must pay the tenant the amount of \$1504.95 and that it must be paid forthwith. This order may be filed with and enforced as an order of the Provincial Court of British Columbia.

Dated: December 8, 2008