



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 hearing dealt with an application by the tenant seeking the return of double his security deposit plus interest less the sum returned by the landlord. Both parties appeared for the hearing and were provided the opportunity to be heard and respond to the evidence of the other party.

Issue to be Determined:

Has the landlord complied with section 38(1) of the *Act* by only returning a portion of the tenant's security deposit?

Background and Evidence:

This tenancy began on August 1, 2007 for the monthly rent of \$1,500.00. The tenant paid a security deposit of \$750.00 on July 15, 2007. The tenancy ended effective August 30, 2008 after the tenant gave 30 days notice.

The landlord did not complete a move in condition inspection report at the start of the tenancy or at the end of the tenancy. However the parties did walk through the rental unit. At the end of the move out condition inspection the tenant agreed to the deduction of \$82.00 from his security deposit towards outstanding utilities. The landlord received the tenant's forwarding address on July 26, 2008.

In a cheque dated September 11, 2008 the landlord returned a portion of the tenant's security deposit for the sum of \$339.25. This sum was the remainder of the tenant's security deposit, not including interest, less further deductions she decided to make without the consent of the tenant. The landlord stated that a further cheque of \$72.00 was sent to the tenant; however, the tenant denies receiving any further amounts from the landlord.

Analysis:

I find that the landlord extinguished any right to the tenant's security deposit by failing to conduct the move in and move out condition inspections as required under the *Act*. I also find that the landlord did not have the written consent of the tenant to make any deductions to the security deposit but did have verbal consent from the landlord to

deduct a sum owed for outstanding utilities. I accept that this was done rather than the tenant providing the money directly to the landlord.

The landlord's evidence and submissions supporting her decision to deduct amounts from the tenant's security deposit was not relevant to the application before me. The only issue before me is whether the landlord complied with section 38(1) of the *Act* which required the landlord to return the tenant's security deposit, plus interest, within 15 days of the end of the tenancy or to file an application for dispute resolution to retain the tenant's security deposit. I find that the landlord failed to comply with section 38(1) of the *Act*.

As a result the landlord must pay the tenant double his security deposit plus interest less any portion already received by the tenant. I also find that the landlord is to reimburse the tenant for the cost of filing this application in the amount of \$50.00.

I find that the tenant has established a monetary claim for the sum of \$1,030.87 comprised of double his security deposit of \$1,334.02 (double the security deposit less the sum of \$82.99), plus accumulated interest of \$13.10, plus the \$50.00 filing fee less the sum of \$339.25 paid to the tenant on September 11, 2008 and the sum of \$27.00 for additional utility charges.

Conclusion:

I grant the tenant's application. I grant the tenant a monetary Order for the sum of **\$1,030.87**. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated December 02, 2008.

Dispute Resolution Officer