

# Dispute Resolution Services

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

## **Decision**

**Dispute Codes:** MNDC MNSD FF

## **Introduction**

This matter dealt with an application by the tenants for the return of a security deposit at the end of a tenancy. The tenants also request an order to recover the filing fee for the cost of this application.

The tenant appeared at the hearing, but there was no appearance by the landlord. The tenant provided evidence that the landlord had been served the notice of hearing and the application of dispute resolution via registered mail, on October 23 2008. The Canada Post tracking system shows that the item was successfully delivered on October 29, 2008. I am satisfied that the landlord has been duly served and has elected not to participate in the hearing.

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

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

## **Background and Evidence**

The evidence of the tenants is as follows:

- the tenancy commenced on July 1, 2008
- the tenants paid the landlord a security deposit of \$1200.00 at the start of the tenancy
- the tenancy ended when the tenants vacated the rental unit on August 31, 2008

- the tenants provided the landlord their forwarding address in writing on September 15, 2008 via registered mail, and requested that the security deposit be returned
- 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**

In reviewing the undisputed evidence before me, I find that the landlord has failed to comply with s. 38(1) of the RTA and that there is no evidence before me that the landlord has filed an application for dispute resolution.

I find that as the landlord has failed to comply with s. 38 (1), that pursuant to s. 38(6)(b), that the landlord must pay the tenant double the security deposit. I also find that the tenant is entitled to recover the \$50.00 filing fee for the cost of this application.

**Conclusion**

I order that the landlord must pay the tenant the security deposit plus interest in the amount of \$1207.57 plus a further \$1200.00 and the \$50.00 filing fee for a total of \$2457.57. This amount must be paid forthwith. The order may be filed with and enforced as an order of the Provincial Court of British Columbia.

Dated: December 1, 2008