

## DECISION

### **Dispute Codes:**

MNSD

### **Introduction**

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

I reviewed the evidence on the case file prior to the Hearing. The Tenants gave affirmed evidence and this matter proceeded on its merits.

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

This is the Tenant’s application for a Monetary Order for double the security deposit from the Landlord.

- (1) Is the Tenant entitled to a monetary order under Section 38(6) of the Act?

### **Background and Evidence**

#### Tenants’ evidence

The Tenants provided the following evidence, orally and in their evidence package:

- The Tenants mailed the Landlord a copy of their Application, along with the hearing package, via registered mail to the address where the Landlord carries on business, on January 13, 2009.

- The Tenants provided the Landlord's agent with notice in writing of their forwarding address. The Tenants testified that they hand delivered the written notice to the Landlord's agent when they moved out of the rental unit.
- The tenancy started on January 1, 2008 and ended on August 15, 2008. The Landlord did not return the security deposit within 15 days of the end of tenancy or the Landlord's agents' receipt of the Tenants' forwarding address. The Landlord did not make an application claiming against the security deposit or pet damage deposit within 15 days of the end of tenancy or the date the Tenants provided the Landlord's agents with written notification of their forwarding address.
- The Landlord and Tenants did not meet together to perform a move-out inspection.
- The Tenants paid a security deposit to the Landlord's agents in the amount of \$350.00 on January 1, 2008. The cheque was made payable to the Landlord and was cashed.

### **Analysis**

This Hearing was scheduled for 10:30 a.m., March 11, 2009, via telephone conference. The Hearing concluded at 10:55 a.m. The Landlord did not sign in to the Hearing.

I accept the Tenants' testimony that they mailed the Landlord a copy of their application and hearing package by registered mail on January 13, 2009. Section 90 of the Act deems that documents served in this fashion are received five days after mailing the documents. Therefore, the Landlord is deemed to have been served on January 18, 2009.

Section 38(1) of the Act provides that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord **must** repay any security deposit or pet damage deposit to the

tenant with interest, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I grant the Tenants a monetary order in the amount of \$705.25, calculated as follows:

Double the security deposit	\$700.00
Accrued interest on the \$350.00 security deposit	<u>\$5.25</u>
Balance owing by the Landlord to the Tenants	\$705.25

### **Conclusion**

I grant the Tenants a monetary order for \$705.25 against the Landlord. This order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

March 16, 2009

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