



Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: MNSD & FF

Introduction:

This hearing dealt with an application by the tenant's estate for the return of double the tenant's security deposit plus interest in accordance with section 38(6) of the *Act*. 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:

Is the estate of the tenant entitled to the return of double the security deposit plus interest?

Background and Evidence:

This tenancy began on July 1, 2005 for the monthly rent of \$1,400.00 and a security deposit of \$700.00 paid on June 28, 2005. The tenancy ended effective November 20, 2008. The tenant and the landlord participated and filled out move-in and move-out condition inspection reports as required by the *Act*. The landlord received the tenant's forwarding address in writing effective November 28, 2008.

During the move-out condition inspection it was noted on the report that the rental unit required some further cleaning and touch up painting. The tenant's agent signed the move-out condition inspection report agreeing with the condition of the rental unit as documented.

On December 15, 2009 the landlord returned a portion of the tenant's security deposit after making deductions for cleaning, carpet cleaning and painting. The tenant's agent responded in writing on December 19, 2008 indicating that she disagreed with the deductions and requesting the return of all the deposit. The tenant's agent also disagreed with the amount deducted by the landlord for painting. As a result of these statements the landlord returned a further portion of the security deposit on January 1, 2009.

The agent for the tenant stated that the landlord never received written consent to withhold the security deposit and failed to comply with section 38(1) of the *Act*. The tenants also stated that she communicated immediately to the landlord that she did not agree with or accept the deduction for the costs the landlord claimed.

The landlord submitted that the tenant agreed to the condition of the rental unit and signed the move-out condition inspection report; therefore, the tenant accepted the costs and the landlord could make the deductions to the security deposit. The landlord did acknowledge that the costs claimed by them were not provided or indicated at the time the tenant signed the move-out condition inspection report.

Analysis:

Section 38(1) of the *Act* places a rigorous obligation on the landlord to return a tenant's security deposit within 15 days after a tenancy ends. Alternatively, the landlord has the right to file an application to for dispute resolution requesting to retain all or a portion of a tenant's security deposit plus interest against claimed costs due to unpaid rent and/or cleaning or repairing a rental unit. The timeframe established by the *Act* begins at the end of the tenancy or when the landlord receives the tenant's forwarding address in writing – based on the latter.

The landlord can only retain all or a portion tenant's security deposit plus interest with the written consent of the tenant. I do not accept the landlord's position that the tenant signed over the right to the landlord to retain all or a part of the security deposit by signing the move-out condition inspection report. This document only provided that the tenant agreed with the noted condition of the rental unit. The document did not provide any indication that sums would be deducted from the security deposit. The tenant cannot waive their rights when the landlord fails to disclose the claims being made against the other party.

The landlord decided to retain a portion of the tenant's security deposit without written consent. The landlord failed to return the full security deposit plus interest within 15 days and failed to file an application seeking authorization from a Dispute Resolution Officer to retain all or a portion of the tenant's security deposit. As a result, I find that the landlord failed to comply with section 38(1) of the *Act*.

Section 38(6) of the *Act* states that if a landlord fails to comply with subsection (1) then the landlord must pay the tenant double the security deposit plus interest. On this basis I grant the tenant's application.

I grant the tenant a monetary Order for the sum of **\$1,474.80** comprised of double the original security deposit of \$700.00, accumulated interest to date of \$24.80 plus the recovery of the \$50.00 filing fee paid by the tenant for this application. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion:

The tenant's application for the return of double the security deposit plus interest is granted.

Dated March 03, 2009.

Dispute Resolution Officer