



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

<u>MNDC</u>	Money Owed or Compensation for Damage or Loss
<u>MNSD</u>	Monetary Order for the Return of the Security Deposit
<u>FF</u>	Recover the Filing Fee for this Application from the Respondent

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for a monetary order for money owed or compensation for damage or loss under the Act and an order for the return of the security deposit retained by the landlord.

. Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on February 12, 2009 and successfully delivered and signed for on February 13, 2009, the landlord did not appear.

Issue(s) to be Decided

The tenant was seeking to receive a monetary order for the return of the security deposit and compensation for rent deducted from the tenant's bank account by the landlord during the month of November 2008 after the tenancy had already ended.

The issues to be determined based on the testimony and the evidence are:

- Whether the tenant is entitled to the return of the security deposit pursuant to section 38 of the Act. This determination is dependant upon the following:
 - Did the tenant pay a security deposit?

- Did the tenant furnish a forwarding address in writing to the landlord?
- Did the tenant provide written consent to the landlord permitting the landlord to retain the security deposit at the end of the tenancy?
- Was an order issued permitting the landlord to retain the deposit?
- Whether the tenant is entitled to monetary compensation under section 67 of the *Act* for damages or loss. This determination is dependant upon answers to the following questions:
 - Has the tenant submitted proof of the existence and monetary amount of the damage or loss?
 - Has the tenant submitted proof that the damage or loss was caused by the respondent through a violation of the *Act* by the respondent?

The burden of proof is on the applicant.

Background and Evidence

Submitted into evidence was, a copy of a the tenant's bank statement indicating that on November 4, 2008, \$850.00 was withdrawn from the tenant's bank account by the respondent company. A copy of a letter from the tenant to the landlord dated November 7, 2008 was submitted into evidence, giving the landlord the tenant's forwarding address, informing the landlord that \$850.00 was wrongfully withdrawn from the tenant's bank account by the landlord/company and requesting the return of these funds. Also submitted into evidence was copy of a letter from the landlord dated November 6, 2007 discussing the return of a security deposit from the tenant's rental of a different suite prior to his moving into the subject unit, a printout of the company contact information registered with the BC Ministry of Finance and proof of service.

The tenant testified that the tenancy ended on October 31, 2008 and he made repeated written requests for the return of the excess rent withdrawn by the landlord and the refund of his security deposit. However the landlord has failed to reimburse the tenant.

Analysis

Claim for Damages and Loss

In regards to an Applicant's right to claim damages from the another party, Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.

4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the tenant, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the landlord.

Based on the evidence and testimony, I find that the tenant has established that the landlord wilfully contravened the Act by withdrawing funds in the amount of \$850.00 from the tenant's bank account on November 4, 2008 after the tenancy had ended. I find that the tenant has met the burden of proof to support compensation under the Act in the amount of \$850.00.

Claim for Return of Security Deposit

In regards to the return of the security deposit and pet damage deposit, I find that section 38 of the Act is clear on this issue. Within 15 days after the later of the day the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the 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.

The Act states that the landlord can only retain a deposit if the tenant agrees in writing the landlord can keep the deposit to satisfy a liability or obligation of the tenant, or if, after the end of the tenancy, the director orders that the landlord may retain the amount.

I find that the tenant did not give the landlord written permission to keep the deposit, nor did the landlord make application for an order to keep the deposits.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the

tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that the tenant's security deposit with interest was \$432.46 and that the landlord failed to follow the Act and illegally retained funds being held in trust for the tenant. I find that the tenant is therefore entitled to compensation of double the deposit, amounting to \$850.00 plus the \$7.46 interest on the original deposit totalling \$857.46.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation of \$1,757.46 comprised of \$850.00 reimbursement for money withdrawn from the tenant's account, \$850.00 for double the security deposit, \$7.46 interest on the original deposit and .the \$50.00 paid by the tenant for this application. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

April, 2009

Date of Decision

Dispute Resolution Officer