

Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNSD, FF

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 Tenants' application for a monetary order for double the security deposit, and to recover the filing fee from the Landlords.

- (1) Are the Tenants entitled to a monetary order?
- (2) Are the Tenants entitled to recover the filing fee from the Landlords?

Background and Evidence

Service

The Tenants testified that they mailed the Landlords the Notice of Hearing documents, by registered mail, on March 2, 2009. The Tenants provided a tracking number for the registered mail. A search of the Canada Post tracking system indicates that the

Landlord SA signed for the registered mail documents on March 4, 2009. Although duly served, the Landlords did not appear at the Hearing and it proceeded in their absence.

Tenants' evidence

- The Tenants paid a security deposit in the amount of \$650.00 to the Landlord on September 1, 2008.
- On October 21, 2008, the Tenants provided the Landlords with notice that they were ending the tenancy, effective November 28, 2008. In the letter giving notice, the Tenants also provided the Landlords with their forwarding address and requested return of the security deposit.
- The Landlords returned \$550.00 of the security deposit to the Tenants by way of cheque dated February 9, 2009. The Tenants received the \$550.00 on February 13, 2009.

Analysis

Section 38 of the Act states:

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.

The Landlords did not refund any of the security deposit to the Tenants and did not file an Application for Dispute resolution within 15 days of the end of tenancy. Pursuant to Section 38(6), the Tenants are entitled to double to the amount of the security deposit.

The Tenants have been successful in their application and are entitled to recover the cost of the filing fee from the Landlords.

The Landlords paid \$550.00 towards the refund of the Tenants' security deposit on February 13, 2009. Therefore the Tenant has established a monetary order as follows:

Double the security deposit:	\$1,300.00
Interest accrued on the security deposit:	\$3.25
Recovery of the filing fee:	\$50.00
Less \$550.00 paid to the Tenants on Feb 13/09:	<u><\$550.00></u>
TOTAL:	\$803.25
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Conclusion

I grant the Tenants a monetary order for \$803.25 against the Landlords. This order must be served on the Landlords and may be filed in the Provincial Court of British

Columbia (Small Claims) and enforced as an order of that Court.

May 11, 2009
