

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.

The Tenant’s agent gave affirmed evidence and this matter proceeded on its merits.

Issue(s) to be Decided

- Are the Tenants entitled to return of the security deposit?
- Are the Tenants entitled to recover the cost of the filing fee from the Landlord?

Background and Evidence

Tenants’ evidence

- The Tenant’s agent testified that the Landlord was mailed the Notice of Hearing package, by registered mail, on February 23, 2009. He provided a tracking number for the registered mail package. A search of the Canada Post website indicates that the package was signed for on February 24, 2009.
- The Tenants paid a security deposit in the amount of \$447.50 on December 1, 1999. The Tenants paid a deposit for a key fob in the amount of \$60.00 on December 1, 1999.
- The Tenants moved out of the rental unit on January 31, 2009.
- There was no move-out inspection done on the rental unit.

- The Tenants returned the key fob to the Landlord when they vacated the rental unit.
- The Tenants wrote a letter to the Landlord on February 4, 2009, providing their new residential address and requesting return of the security deposit and key fob deposit.
- The Landlord replied by letter on February 9, 2009, refusing to return the security deposit.

Analysis

I accept the Tenant's agent's testimony that the Landlord was duly served with the Notice of Hearing documents. Despite being served with the Tenants' Application for Dispute Resolution and Notice of Hearing documents, the Landlord did not appear at the Hearing and the Hearing proceeded in its absence.

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.

In the absence of any evidence to the contrary from the Landlord, I find that the Landlord did not repay the Tenants the security deposit and key fob deposit, or apply for dispute resolution, within 15 days of receiving the Tenant's written notice of their forwarding address. Therefore, pursuant to Section 38(6) of the Act, the Tenants are entitled to double the amount of the security deposit and I make that order.

Section 6 (1) of the Residential Tenancy Regulations states:

Refundable fees charged by landlord

6 (1) If a landlord provides a tenant with a key or other access device, the landlord may charge a fee that is

- (a) refundable upon return of the key or access device, and
- (b) no greater than the direct cost of replacing the key or access device.

The Tenants returned the key fob to the Landlord and are entitled to return of the fee for the key fob.

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

The Tenants have established a monetary claim, as follows:

Double the security deposit paid to the Landlord	\$895.00
Interest accrued on the \$447.50 security deposit	\$40.23
Return of the key fob fee	\$60.00
Recovery of the filing fee	<u>\$50.00</u>
TOTAL	\$1,045.23
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Conclusion

I grant the Tenants a monetary order for \$1,045.23 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.

May 12, 2009
