

# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## Decision

### **Dispute Codes:**

MNDC

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 provided by the parties prior to the Hearing. The Tenant gave affirmed evidence and this matter proceeded on its merits.

### **Issues to be Decided**

- (1) Is the Tenant entitled to a monetary order for double the security deposit paid to the Landlords?
- (2) Is the Tenant entitled to a monetary order for compensation for damage under the Act?
- (3) Is the Tenant entitled to recover the cost of the filing fee from the Landlords?

### **Background and Evidence**

#### Tenant's testimony

- On March 25, 2009, the Tenant mailed the Landlords the Notice of Hearing

documents, by registered mail to the Landlords' address for service given on the Tenancy Agreement. The Tenant provided copies of the registered mail receipts and Canada Post tracking numbers, together with two tracking system printouts confirming that the packages were successfully delivered to the Landlords.

- The Tenancy started on September 1, 2008 for a fixed term of one year. Monthly rent was \$1,700.00, payable on or before the first day of each month. The Tenant paid the Landlords a security deposit in the amount of \$1,700.00 on August 13, 2008.
- The Tenant and the Landlords reached a mutual end-of tenancy agreement for a move-out date of January 31, 2009.
- On January 31, 2009, the Tenant called the Landlord RT to request a move-out inspection.
- On February 6, 2009, the move-out inspection took place with the Tenant and the Landlord RT present. The Tenant requested return of the security deposit and the Landlord RT provided the Tenant with a cheque in the amount of \$1,700.00, post-dated to February 13, 2009.
- The Tenant deposited the cheque into his bank account on February 13, 2009.
- On February 20, 2009, the Tenant received notice from his bank that the cheque had bounced because the Landlord RT had put a stop-payment on the cheque. The Tenant provided a copy of the cancelled cheque.
- On February 25, 2009, the Tenant provided the Landlords written notification of his forwarding address and requested return of the security deposit.
- The Landlords have not returned the Tenant's security deposit or filed an application with respect to the security deposit within 15 days of receiving the Tenant's forwarding address.

### **Analysis**

The Landlords were duly served with the Notice of Hearing documents, but did not attend the teleconference and the hearing proceeded in their absence. It is important to

note that the Landlords provided written evidence to the file, indicating that they were filing a counter-claim. However, no counter-claim of the Landlords has been filed in this matter.

Sections 38(1) and (6) of the Act state:

**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.

(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.

Pursuant to Section 38(6) of the Act, the Tenant is entitled to a monetary order for double the security deposit. The Landlords required more than ½ a month's rent as a security deposit in contravention of Section 19(1) the Act. The Tenant did not deduct the overpayment from rent, and therefore I find that the Tenant is entitled to double the total security deposit paid to the Landlords.

The Tenant incurred a bank charge of \$15.00 for the returned cheque because the Landlord RT placed a stop-payment on the cheque. The Tenant is entitled to compensation in the amount of \$15.00 for damages.

The Tenant has been successful in his application and entitled to recover the cost of the filing fee from the Landlords.

The Tenant has established a monetary order against the Landlords as follows:

Double the security deposit	\$3,400.00
Interest accrued on \$1,700.00 from August 13, 2008 to date:	\$9.82
Bank charges for stopped payment of cheque:	\$15.00
<u>Recovery of the filing fee:</u>	<u>\$50.00</u>
TOTAL monetary order:	\$3,474.82

### **Conclusion**

Pursuant to Sections 38(6) and 67 of the Act, I hereby grant the Tenant a Monetary Order in the amount of \$3,474.82 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.

June 24, 2009

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