

Decision

Dispute Codes:

MNSD

Introduction

I have been delegated 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 Tenant prior to the Hearing.

Issue(s) to be Decided

- (1) Is the Tenant entitled to a monetary order for double the amount of the security deposit paid to the Landlord?

Background and Evidence

The Tenant mailed the Landlords LV and JV the Notice of Hearing documents, by registered mail, to the Landlords' address on April 2, 2009. The Tenant provided a tracking number for the registered mail documents. A search of the tracking system confirms that the Landlords signed for the documents on April 6, 2009.

The Tenant paid the Landlords a security deposit in the amount of \$250.00 on August 17, 2005. The tenancy started on October 1, 2005 and ended on October 15, 2008. There was a move-in inspection done (copy provided into evidence), but the Landlords did not participate in a move-out inspection.

The Tenant wrote to the Landlord JV on January 19, 2009, requesting return of the security deposit within 15 days of receipt of the written request. The Tenant provided a

copy of the written request into evidence. On February 18, 2009, the Tenant sent the written request, by registered mail to the Landlord JV at the Landlords' address, and to an agent of the Landlord at the subject rental property. The Tenant provided a copy of the letter and a copy of the registered mail receipts together with a printout of the Canada Post tracking printout, indicating that the Landlord's agent signed for the registered mail document on February 19, 2009.

Analysis

I accept the Tenant's testimony that the Landlords JV and LV were duly served with the Notice of Hearing package and a copy of the Tenant's Application for Dispute Resolution. The Tenant did not prove service of the Landlord that is a numbered company.

The Tenant provided a copy of the Tenancy Agreement, which was signed by the Landlord JV and the Tenant on November 25, 2005. The Tenancy Agreement provides the address for service for the Landlord/Owner JV. The Tenant mailed the Notice of Hearing documents to the address listed on the Tenancy Agreement.

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 written request for return of the security deposit does not contain the Tenant's forwarding address. However, the Tenant's Application for Dispute Resolution discloses the Tenant's address, and therefore I find that the Landlords JV and LV received written notification of the Tenant's forwarding address on April 6, 2009, the date the Landlords JV and LV received a copy of the Tenant's Application for Dispute Resolution. Furthermore the Landlords JV and LV were aware of the nature of the Tenant's application (for double the security deposit).

The Landlords JV and LV did not return the Tenant's security deposit, or make an application claiming the deposit within 15 days of receiving the Tenant's written forwarding address. Therefore, pursuant to Section 38(6), the Tenant is entitled to a monetary order for double the security deposit, together with accrued interest on the security deposit.

The Tenant has established a monetary order against the Landlords JV and LV, as follows:

Double the security deposit:	\$500.00
Interest accrued on the \$250.00 security deposit:	<u>\$8.86</u>
TOTAL	\$508.86
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Conclusion

Pursuant to Sections 38(6) and 67 of the Act, I hereby grant the Tenant a Monetary Order in the amount of \$508.86 against the Landlords JV and LV. This Order must be served on the Landlords JV and LV and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

The Tenant's application against the Landlord that is a numbered company is dismissed.

June 22, 2009
