

## **Dispute Codes:**

MNSD

## **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 parties gave affirmed evidence and this matter proceeded on its merits.

## **Issue(s) to be Decided**

- (1) Is the Tenant entitled to a monetary order under Section 38(6) of the Act?

## **Background and Evidence**

The parties entered into a written tenancy agreement on October 26, 2008. A copy of the tenancy agreement was provided into evidence. The Tenant paid a security deposit in the amount of \$275.00 on October 31, 2008. The tenancy was for a fixed term, expiring April 30, 2009. The Landlord allowed the Tenant to remain on the rental property for a week after the tenancy ended.

The Tenant provided the Landlord with written notification of her forwarding address, requesting return in full of her security deposit, via registered mail. The Landlord received the Tenant’s forwarding address on May 14, 2009. On May 21, 2009, the Landlord returned a portion of the Tenant’s security deposit in the amount of \$49.00,

along with a list of items the Landlord alleges were damages. The total alleged damages were calculated by the Landlord to equal \$226.00.

The Landlord provided photographs and copies of letters to the Tenant with respect to damages he alleged were the Tenant's responsibility.

### **Analysis**

It is important to note that a security deposit does not belong to the Landlord. It is held in trust for the Tenant, to be applied in accordance with the Act.

Unless a tenant agrees in writing that the landlord may retain an amount to pay a liability or obligation of the tenant, within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord **must** repay any 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.

Section 38(6) of the Act provides that if a landlord does not return the deposit or file for dispute resolution, the landlord **must** pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I enclose a copy of Section 38 of the Act for the information of the Landlord.

The Landlord did not return the full security deposit, nor did he file an application against the security deposit within 15 days of receiving the Tenant's written notification of her forwarding address on May 14, 2009. Therefore, the Tenant is entitled to double the amount of the security deposit retained by the Landlord.

The Landlord is at liberty to file an application for damages, should he choose to do so.

I grant the Tenant a monetary order against the Landlord in the amount of \$452.70, being double the amount of the security deposit retained by the Landlord in contravention of the Act, plus interest accrued on \$275.00.

**Conclusion**

Pursuant to Section 38(6) of the Act, I grant the Tenant a monetary order for \$452.70 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.

July 29, 2009

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