

## **DECISION**

### **Dispute Codes:**

MNSD, FF

### **Introduction**

This is the Tenant's application for return of the security deposit paid to the Landlord, and to recover the cost of the filing fee.

I reviewed the evidence provided prior to the Hearing. The parties gave affirmed testimony and the Hearing proceeded on its merits.

### **Issues to be Decided**

- Is the Tenant entitled to a monetary order for the amount of the security deposit and recovery of the filing fee from the Landlord?

### **Background and Evidence**

The Tenant gave the following testimony:

- The tenancy started on February 1, 2009 and ended on April 30, 2009.
- There was no written tenancy agreement.
- The Tenant paid the Landlord a security deposit in the amount of \$200.00 on January 29, 2009.
- The Tenant mailed the Landlord notice of her forwarding address in May, 2009, but is not certain of the specific date.

The Landlord gave the following testimony:

- The Tenant gave the Landlord her written forwarding address, by mail, on May 14, 2009. The Landlord did not return the Tenant's security deposit.
- About a month after the tenancy began, the Tenant had a friend move into the rental unit. The Landlord wanted \$200.00 more a month in rent, but the Tenant refused. The Landlord kept the security deposit because the Tenant would not pay the extra rent.

### **Analysis**

A security deposit is not the property of the Landlord. It is held in trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

I accept that the Tenant provided the Landlord with written notification of her forwarding address on May 14, 2009, in accordance with Section 88(c) of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

The Landlord did not return the security deposit within 15 days of receipt of the Tenant's forwarding address, nor did the Landlord file for dispute resolution against the security deposit.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit. Therefore, the Tenant is entitled to a monetary order for double the security deposit, in the amount of \$400.00. No interest has accrued on the security deposit.

The Tenant has been successful in her application and is entitled to recover the cost of the filing fee from the Landlord.

### **Conclusion**

I hereby grant the Tenant a Monetary Order against the Landlord in the amount of \$450.00. 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 11, 2009.

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