



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: MNSD and FF

Introduction

This application was brought by the tenant seeking return of his security deposit in double under section 38(6) of the *Act* on the claim that the landlord failed to return it within 15 days of the latter of the end of the tenancy and receipt of his forwarding address. The tenant also seeks to recover the filing fee for this proceeding.

Issue(s) to be Decided

This matter requires a decision on whether the tenant is entitled to Monetary Order for return of his security deposit and whether that amount should be doubled.

Background and Evidence

This tenancy began on November 1, 2008 and ended on March 31, 2009. Rent was \$875 per month and the landlord holds a security deposit of \$437.50 paid on or about November 1, 2009.

During the hearing, the tenant gave evidence that he had provided the landlord with his forwarding address, at the time, the home of his parents. He stated that he had given the address in writing to the building prior to April 10, 2009 but he did not have or submit a copy of that letter into evidence.

The landlord stated that he had never received the tenant's forwarding address, and that he had felt he had a right to retain the security deposit due to damage to the rental unit, an assertion challenged by the tenant. He said he was not familiar with the provisions of section 38 of the Act which establish the rules for disposition of security deposits.

Analysis

Section 38(1) of the *Act* provides that, within 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address, unless the tenant agrees otherwise, the landlord must either return the security deposit or make application for dispute resolution to claim upon it.

Section 38(6) of the *Act* states that, if the landlord does not comply with subsection (1), the landlord "must" pay the tenant double the amount of the deposit.

As the burden of proof lies with the applicant, and as the parties disagree as to whether the tenant provided a forwarding address, and as I do not have a copy of the letter providing the forwarding address, I find that I cannot order the deposit returned in double.

However, the landlord clearly received the tenant's address by way of the Application and Notice of Hearing. I find that he was in possession of the tenant's address as of late June or early July, as evidenced by the certificate of Express Post submitted by the tenant. The landlord was clearly in a position to return the deposit or make application at that time.

While I cannot order double the deposit returned on that deduction, I do find that the landlord owes the tenant the bare security deposit plus interest, plus recovery of the filing fee for this proceeding, calculated as follows:

Security deposit	\$437.50
Interest (December 17, 2009 to date)	1.09
Filing fee	50.00
TOTAL	\$488.59

Conclusion

Accordingly, the tenant's copy of this decision is accompanied by a Monetary Order for \$488.59, enforceable through the Provincial Court of British Columbia, for service on the landlord.