

DECISION

Dispute Codes: MNSD, MNDC and FF

Introduction

This application was brought by the tenant seeking return of double a portion of her security deposit retained by the landlord without her consent and without the landlord having made application to make claim on it.

Issue(s) to be Decided

This matter requires a decision on whether the tenant is entitled to Monetary Order for double the portion of the security deposit which was not returned without the tenant's consent.

Background and Evidence

This tenancy began on September 1, 2008 under a fixed term rental agreement set to end on June 30, 2009. Rent was \$1,350 per month and the landlord held a security deposit of \$675, paid on July 22, 2009.

As a matter of note, two provisions of the rental agreement pertaining to the deposit run contrary to the *Residential Tenancy Act* and are, therefore, of no effect.

In one, the rental agreement states that no interest is payable on the deposit, a provision superseded by Schedule (2) of the *Regulations*; in the other, the rental

agreement states that the deposit will be returned within 30 days whereas section 38(1) the *Act* sets the time limit at 15 days.

During the hearing, the parties agreed that the landlord had returned \$382.45 of the deposit. However, I failed to take note during the hearing that the landlord had received the forwarding address on July 1st or 2nd and the payment was sent on July 25th and received on July 28th, beyond the 15 days required by section 38(1) of the *Act*.

The parties further concurred that the tenant had previously agreed that the landlord could retain \$96.70 for washing machine repairs and \$65 for carpet cleaning from the deposit. In addition, at the hearing, the tenant was made aware of the landlords claim for a missing sink stopper and agreed to that charge of \$10.85.

At that, the tenant stated that she would be happy to settle her claim for \$120, the approximate difference between the security deposit less the amount returned late and the amounts she had agreed could be deducted. However, the landlord declined to settle stating that her damage and losses exceeded the amount she had retained and she wished to retain her right to file for dispute resolution to claim full damages.

Analysis

As noted, section 38(1) of the *Act* states that a landlord must, with 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address either return the security deposit or make application to claim on it, unless the tenant agrees otherwise.

Section 38(6) of the *Act* requires that, if the landlord does not comply with section 38(1), the landlord must pay the (balance of) the security deposit in double. As the portion that

was returned was outside the 15 day time limit, I must find that the tenant is entitled to an amount to double the portion of the security deposit she agreed was due.

Thus, I find that the landlord owes to the tenant an amount calculated as follows:

Security deposit	\$675.00
Interest due (July 22, 2008 to date)	<u>4.51</u>
Sub total	\$679.51
Less washing machine repair agreed to	- 96.70
Less carpet cleaning agreed to	- 65.00
Less sink stopper agreed to	- <u>10.85</u>
Sub total (amount due to tenant within 15 days)	\$506.96
Less amount paid late to tenant on July 25, 2009	- <u>382.45</u>
Sub total (Difference between amount due and amount paid)	\$124.51
To double the amount due to tenant and not paid within 15 days	<u>506.96</u>
TOTAL	\$631.47

Conclusion

Thus, the tenant's copy of this decision is accompanied by a Monetary Order for \$631.47, enforceable through the Provincial Court of British Columbia, for service on the landlord. The parties remain at liberty to pursue a settlement if they so prefer.