

## **Decision**

### **Dispute Codes:**

MNSD, FF

### **Introduction**

This is the Tenant's application for a Monetary Order for double the security deposit; and to recover the cost of the filing fee from the Landlord.

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 double the amount of the security deposit pursuant to the provisions of Section 38 of the Act?

### **Background and Evidence**

The parties agreed on the following facts:

The Tenant paid a security deposit in the amount of \$375.00 on March 1, 2008.

The Tenant gave the following testimony:

- The Tenant provided the Landlord with written notification of his forwarding address on October 31, 2009.
- The Tenant moved out of the rental unit on November 28, 2009.
- On January 4, 2009, the Landlord mailed the Tenant the full amount of the security deposit, together with accrued interest. The Tenant received it on January 6, 2010. A copy of the post-marked envelope containing the security deposit refund was entered in evidence.

The Landlord's agent gave the following testimony:

- The Landlord's agent received the Tenant's written notice on or about the end of September.
- The Tenant vacated the rental unit on November 30, 2009.
- There was no damage to the rental unit, everything was cleaned to the Landlord's agent's satisfaction, and the Tenant did not owe any outstanding rent.
- The Landlord named by the Tenant in his application is an agent of the Landlord. The actual Landlord received the paperwork from the Landlord's agent and processed the refund cheque. The Landlord's agent provided the Landlord with the required paperwork on or about December 2, 2009.

### **Analysis**

Section 38 of the *Residential Tenancy Act* (the "Act") provides that a security deposit must be either refunded in full to a tenant, or the landlord must file an application against the security deposit, within 15 days of the end of the tenancy or the date the tenant provides his forwarding address in writing. If the landlord does return the security deposit or file an application against it within the time allowed, the landlord must pay double the amount of the security deposit to the tenant.

Section 1 of the Act defines "landlord", as follows:

**"landlord"**, in relation to a rental unit, includes any of the following:

**(a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,**

**(i) permits occupation of the rental unit under a tenancy agreement, or**

**(ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;**

(b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);

(c) a person, other than a tenant occupying the rental unit, who

(i) is entitled to possession of the rental unit, and

(ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

(d) a former landlord, when the context requires this;

(emphasis added)

I find that the Landlord's agent is a landlord as defined by the Act.

Based on the testimony of both parties, I find that the Tenant provided the Landlord with written notification of his forwarding address before the end of the tenancy. In this case, there was some dispute as to the date the Tenancy ended, but in any event the Landlord did not return the security deposit to the Tenant within 15 days of the end of the tenancy.

The Landlord returned the security deposit and accrued interest to the Tenant on January 6, 2010. Therefore, I find the Tenant is entitled to a monetary award as follows:

Double the security deposit	\$750.00
Accrued interest on the security deposit	\$4.70
Less amount received by the Tenant	<u>-\$379.70</u>
Balance owing to the Tenant	\$375.00

The Tenant has been successful in his claim and is entitled to recover the cost of the filing fee in the amount of \$50.00 from the Landlord.

### **Conclusion**

I hereby grant the Tenant a Monetary Order in the amount of \$425.00 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.

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: May 13, 2010