

DECISION

Dispute Codes

MNSD, FF

Introduction

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

The parties gave affirmed testimony and this matter 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(6) of the Act?

Background and Evidence

The Tenant paid a security deposit in the amount of \$375.00 on June 1, 2001.

The Tenant testified that she mailed the Landlord with the Notice of Hearing package, by registered mail, on December 24, 2010.

The Tenant testified that the tenancy ended as a result of the Landlord issuing a Notice to End Tenancy for Landlord's Use. The Tenant chose to move earlier than the effective date of the end of tenancy and gave the Landlord her notice accordingly.

The Tenant testified that she moved out of the rental unit on December 5, 2009. She testified that she provided the Landlord with her forwarding address in writing on

December 5, 2009, when the parties met to do the move-out inspection. The Tenant testified that the Landlord has not returned the security deposit.

The Landlord denied receiving the Tenant's forwarding address on December 5, 2009. The Landlord testified that the Tenant gave up her claim to return of the security deposit in a letter dated November 23, 2009, where the Tenant wrote, "Please refund me \$865.00 - \$139.50 = \$725.50. After speaking with the tenancy branch, this amount is due on or before December 5, 2009. This does include my damage deposit".

The Tenant testified that she had made a mistake in not including the word "not" in her last sentence. The Tenant testified that she realized her mistake and advised the Landlord of the error and also provided the Landlord with another letter correcting the error. Copies of both letters were provided in evidence by the Tenant. Both letters are signed by a witness as to service of the letters on the Landlord.

The Tenant testified that after the tenancy ended, in March, 2010, the Landlord cashed two of the Tenant's postdated cheques, without legal right to the money. The Tenant testified that the police had directed the Landlord to return the money to the Tenant, which he subsequently did.

The Landlord testified that he only cashed the cheques because the Tenant owed him money for damages caused to the rental unit and he wanted to get her attention.

Analysis

The Landlord cashed the Tenant's post-dated cheques without authority or right to do so. I therefore prefer the Tenant's testimony in its entirety. I find that the Tenant did not give the Landlord written consent to keep the security deposit and that she provided the Landlord with her forwarding address in writing on December 5, 2010. In any event, the Landlord received the Tenant's forwarding address in writing when he was served with the Tenant's Application for Dispute Resolution and Hearing Package. The Landlord

did not return the security deposit to the Tenant, nor did he file against the security deposit within 15 days of receiving the Tenant's forwarding address.

A security deposit is held in trust by the Landlord, to be applied in accordance with Section 38 of the Act, which states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [*tenant fails to participate in start of tenancy inspection*] or 36 (1) [*tenant fails to participate in end of tenancy inspection*].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right

to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) *[service of documents]* or give the deposit personally to the tenant.

Under the provisions of Section 38(6) of the Act, I grant the Tenant's application for double the security deposit. Interest has accrued on the original security deposit in the amount of \$20.11.

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

I hereby provide the Tenant with a Monetary Order against the Landlord, calculated as follows:

Double the security deposit of \$375.00	\$750.00
Accrued interest on the \$375.00 security deposit	\$20.11
Recovery of the filing fee	<u>\$50.00</u>
TOTAL MONETARY AWARD	\$820.11

Conclusion

I hereby grant the Tenant a Monetary Order in the amount of \$820.11 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: June 9, 2010