

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This matter dealt with an application by the Tenants to recover their security deposit plus compensation equivalent to the amount of the security deposit due to the Landlord's failure to return it within the time limits required under the Act and to recover the filing fee for this proceeding.

The Tenants said they served the Landlord with the Application and Notice of Hearing by registered mail on March 4, 2010. According to a copy of the Canada Post online tracking information provided by the Tenants, the Landlord received the hearing package on March 5, 2010. Consequently, I find that the Landlord was served as required by s. 89 of the Act and the hearing proceeded in her absence.

### Issues(s) to be Decided

1. Are the Tenants entitled to the return of their security deposit and if so, how much?

### Background and Evidence

This fixed term tenancy started on October 21, 2010 and expired on February 2, 2010. The Tenants moved out on February 1, 2010. Rent was \$1,750.00 per month (which included \$150.00 for utilities) payable on the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$800.00 at the beginning of the tenancy.

The Tenants said they sent the Landlord their forwarding address by e-mail but could not recall when. The Tenants also said that on the last day of the tenancy they left a business card with their forwarding address together with a note for the Landlord on the counter at the rental unit. One of the Tenants claimed that he was doing some work for the Landlord, so the note advised her to contact him when she was ready for service. The Tenants said the Landlord subsequently sent them an e-mail dated March 1, 2010 in response to their request for the security deposit. The e-mail advised the Tenants that the Landlord had sent them a cheque in the mail as well as by e-mail transfer. The Tenants said that the Landlord in fact, had not, sent a cheque by e-mail but instead sent an e-mail transfer which they received on March 4, 2010 for \$800.00. Consequently, the Tenants argued that the Landlord knew the address on the business card was their forwarding address.

The Tenants said they did not give the Landlord their written consent to keep the security deposit.

### Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date she receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

Based on the fact that the Landlord acknowledged in her e-mail dated March 1, 2010 that she had mailed the Tenants' security deposit to them, I find that the Landlord received the Tenants' forwarding address in writing when she received their business card on February 2, 2010. I further find that the Landlord did not make an application for dispute resolution to make a claim against the deposit and did not return the Tenants' security deposit until March 4, 2010. I also find that the Landlord did not have the Tenants' written authorization to keep the security deposit or to return it late. As a result, I find that the Landlord did not comply with s. 38(1) of the Act and therefore pursuant to s. 38(6) of the Act, the Landlord must pay the Tenants compensation equivalent to the amount of the security deposit or \$800.00.

As the Tenants have been successful in this matter, I also find that they are entitled to recover the \$50.00 filing fee for this proceeding.

### Conclusion

A monetary order in the amount of **\$850.00** has been issued to the Tenants and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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 03, 2010.

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Dispute Resolution Officer