

DECISION

Dispute Codes: MNSD and FF

Introduction

This application was brought by the tenants seeking return of their security deposit in double pursuant to section 38(6) of the *Act* on the grounds that the landlord did not return it within 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address. The tenants also seek return of utilities payments for the last two weeks of the tenancy on the grounds that the landlord had advised them that he had transferred the accounts to his name for that period and that they did not occupy the rental unit for that period while the landlord and his service providers did.

Despite having been served with the Notice of Hearing sent by registered mail on January 21, 2010 to the landlord's address provided on the rental agreement, the landlord did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his absence.

Issues to be Decided

This application requires a decision on whether the tenants are entitled to a Monetary Order for return of their security deposit, and whether the amount should be doubled.

In addition, it must be decided whether the tenants are entitled to recover the utilities payments for the last two weeks of the tenancy and in what amount.

Background and Evidence

This month to month tenancy began on October 15, 2008 and ended on November 15, 2009. Rent was \$1,800 per month due on the 15th day of the month. The landlord holds a security deposit of \$900 paid on September 30, 2008 and a pet damage deposit of \$900 paid on January 13, 2009.

During the hearing, the tenants submitted registered mail tracking numbers which prove that they had sent their forwarding address with request for return of the deposits to the landlord's address provided on the rental agreement and to the rental unit on November 18, 2009.

They also provided copy of an email, the landlord's preferred medium of communication, sent November 16, 2009 providing the same information and request. The landlord did not reply to that email nor to a follow up request sent to him on December 12, 2009.

The tenants stated that the tenancy ended, keys were returned and a move-out inspection conducted with an associate of the landlord on November 15, 2009, but that they had actually vacated on November 1, 2009. They stated that the landlord had advised them that he would be putting gas and hydro in his name starting November 1, 2009, but the change had not taken effect until November 15, 2009. The tenants calculated on a per diem usage that they had paid \$27.28 for hydro and \$34.77 for gas that had actually been used by the landlord from November 1st to 15th 2009.

Analysis

Section 38(1) of the *Act* provides that a landlord must, within 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address, either return the security and pet damage deposits or make application for dispute resolution to make a claim against them..

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

In this case, I find that the landlord did not return the security and pet damage deposits without the tenants' consent and without having applied for dispute resolution for authorization to claim against them.

Accordingly, I find that the landlord must now return the deposits in double in accordance with section 38(6) of the *Act*.

As to the return of utilities, I find that the tenants remained responsible for utilities until the tenancy ended on November 15, 2009.

While I appreciate that the landlord entered the rental unit prematurely and may well have incurred most of the electric and gas usage, I find that, given the relatively small size of the claim and the tenants' ongoing duty, it would be impractical to attempt ascertain the proportion of responsibility of each and this part of the claim is dismissed.

Having found merit in the tenants' application, I find that they are entitled to recover the \$50 filing fee for this proceeding from the landlord.

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

To return the security deposit	\$900.00
Interest (September 30, 2008 to date)	3.43
To double the security deposit	900.00
To return the pet damage deposit (paid Jan. 13, 2009, no interest due)	900.00
To double pet damage deposit	900.00
Filing fee	50.00
TOTAL	\$3,653.43

Conclusion

The tenants' copy of this decision is accompanied by a Monetary Order for **\$\$3,653.43**, enforceable through the Provincial Court of British Columbia, for service on the landlord.

April 15, 2010