

DECISION

Dispute Codes: MNSD and FF

Introduction

This application was brought by the tenant seeking return of her 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.

Issues to be Decided

This application requires a decision on whether the tenant is entitled to a Monetary Order for return of the security deposit in double.

Background and Evidence

This co-tenancy, with three tenant signatories to the rental agreement, began on March 1, 2009 and ended on October 30, 2009. Rent was \$900 per month and the landlord holds a security deposit of \$450 paid on February 18, 2009.

During the hearing, the tenant stated that she had provided the landlords with her forwarding address shortly after the tenancy ended. The landlords stated that they had not received the tenant's forwarding address until they received the Notice of Hearing.

Subsequently, they attempted to serve the tenant with their evidence package at the address given on the Notice of Hearing, but she no longer resided there. The tenant provided them with her current address during the hearing.

Although the landlords' stated they had submitted their evidence package to the branch Burnaby office the week before the hearing, it was not attached to the file in time for the hearing. They stated that it included a copy of the move-out Condition Inspection Report which the tenant had signed on the portion agreeing that the landlord could retain all or part of the deposit against damages. The landlords stated that they had also obtained the verbal consent of the co-tenant who had paid the deposit.

Analysis

Unless tenants agree to surrender it, 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 deposit or make application for dispute resolution to make a claim against it.

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 accept the evidence of the landlords that they did not receive the tenant's forwarding address until the present hearing. While that would normally leave both parties in a position to now dispose of the deposit in accordance with section 38 of the *Act*, if, in fact, the tenant surrendered it on the Condition Inspection Report, then, in all probability, the tenant would not have a right to claim its return.

Conclusion

In the absence of any corroboration of the tenant having provided the landlords with her forwarding address, I find that the application must be dismissed. Given that I do not have a copy of the Condition Inspection Report, I will grant the tenant leave to reapply with the caveat that her signature on the report might well render a further application futile.

May 19, 2010