

DECISION

Dispute Codes: MNSD and FF

Introduction

This application was brought by the tenant on January 11, 2010 seeking a Monetary Order for return of her security deposit after the landlord did not return it or make application to claim upon it with 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address. The tenant also seeks to recover the filing fee for this proceeding from the landlord.

Despite having been served with the Notice of Hearing sent by registered mail on January 18, 2010, 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 tenant is entitled to a Monetary Order for return their security deposit and whether the amount should be doubled.

Background and Evidence

This tenancy began on December 1, 2001 and ended on October 30, 2009. Rent was \$540 per month and the landlord holds a security deposit of \$270 paid on or about December 1, 2001.

During the hearing, the tenant gave evidence that she had provided the landlord with her forwarding address and request for return of the deposit by registered letter sent on November 27, 2009.

She stated that the landlord had purchased the property during her tenancy – in approximately February of 2009 – and that he was of the erroneous belief that the former landlord was responsible for return of the deposit despite her advice to the contrary.

The tenant also stated that the landlord had not responded to her requests that he attend the rental unit to conduct a move-out Condition Inspection report as required under section 35 of the *Act*.

Analysis

The question of the present landlord's responsibility for returning the deposit is addressed at section 93 of the *Act* which states that:

“The obligations of a landlord under this Act with respect to a security deposit or a pet damage deposit run with the land or reversion.”

This means that when a party buys a building with tenants in it, the buyer assumes all rights and responsibilities respecting the security deposit and, as the new landlord, is responsible for its disposition under section 38 of the *Act*. .

Section 38(1) of the *Act* provides that, within 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address, the landlord must return the security deposit to the tenant or make application for dispute resolution to claim upon it.

In this matter, I find as fact that the landlord did not make application to claim the deposit within 15 days of the end of the tenancy and that he had the tenant's forwarding address.

Section 38(6) of the *Act* states that a landlord who does not comply with section 38(1), "must pay the tenant double the amount of the security deposit..." Therefore, I find that the tenant is entitled to return of her security deposit in double plus interest on the bare deposit.

As the application has succeeded on its merits, I find that the tenant should recover her filing fee for this proceeding from the landlord.

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

To return the tenant's security deposit	\$ 270.00
Interest (December 1, 2001 to date)	10.28
To double security deposit as required by S. 38(6)	270.00
Filing fee	50.00
TOTAL	\$600.28

Conclusion

The tenants' copy of this decision is accompanied by a Monetary Order for \$600.28, enforceable through the Provincial Court of British Columbia, for service on the landlord.

June 18, 2010