

## **DECISION**

**Dispute Codes:** MNSD, MNDC, FF

### **Introduction**

This is the Tenant's application for a Monetary Order for return of the security deposit and compensation for damage or loss under the tenancy agreement, Residential Tenancy Act (the "Act"), or regulation; and to recover the cost of the filing fee from the Landlord.

The Tenant gave affirmed testimony at the Hearing. She stated that she mailed the Notice of Hearing documents to the Landlord, via registered mail, on March 15, 2010, to the address for the Landlord noted on the Tenancy Agreement. The Tenant stated that the documents were not picked up by the Landlord. The Tenant provided a copy of the registered mail receipt and tracking number, along with a print out of the Canada Post tracking request in evidence.

Section 90 of the Act deems service in this manner to be effected 5 days after mailing the documents, whether or not the recipient chooses to pick up the documents. Based on the testimony and documentary evidence provided by the Tenant, I find that the Landlord was sufficiently served with the Notice of Hearing documents pursuant to the provisions of Section 89(1)(c) of the Act.

The Landlord did not sign into the teleconference and the Hearing proceeded in his absence.

### **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**

This tenancy began in July, 2009 and ended on January 7, 2010. Monthly rent was \$1,000.00. The Tenant testified that she paid a security deposit to the Landlord in the amount of \$500.00 at the beginning of the tenancy.

The Tenant testified that she mailed her forwarding address to the Landlord, via registered mail, on February 2, 2010, to the address for the Landlord noted on the Tenancy Agreement. The Tenant testified that the Landlord picked up the registered mail package on February 4, 2010. The Tenant provided a tracking number for the document.

The Tenant stated that the Landlord emailed the Tenant, advising that he would not be returning the Tenant's security deposit because he would be applying it towards unpaid rent for January.

## **Analysis**

A security deposit is held in trust for a tenant, to be applied in accordance with the provisions of Section 38 of the Act.

Section 38(1) of the Act provides that, unless a tenant agrees in writing that a landlord may retain all or any of the security deposit, within 15 days of the end of the tenancy, or the date that the tenant provides a forwarding address in writing to the landlord, the landlord **must**:

- Return the security deposit to the Tenant; or
- File an Application for Dispute Resolution against the security deposit.

Section 38(6) of the Act provides that if the landlord does not comply with the provisions of Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit.

In this case, the Landlord did not return the security deposit to the Tenant or file an Application within 15 days of receiving the Tenant's written notification of her forwarding address. Therefore, in accordance with the provisions of Section 38(6) of the Act, I order the Landlord to pay the Tenant the amount of \$1,000.00 (double the amount of the security deposit). No interest has accrued on the security deposit.

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 in the amount of \$1,050.00 against the Landlord.

## **Conclusion**

I hereby provide the Tenant with a Monetary Order against the Landlord in the amount of \$1,050.00. This Order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims Court) 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: July 22, 2010.

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Dispute Resolution Officer