

## **DECISION**

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

### **Introduction**

This is the Tenant's application a Monetary Order for double the security deposit; and to recover the cost of the filing fee from the Landlord.

The Tenant gave affirmed testimony.

On April 1, 2010, the Tenant filed an Application for Dispute Resolution claiming a Monetary Order for compensation for damage or loss in the amount of \$1,200.00 and to recover the cost of the filing fee from the Landlord. On April 22, 2010, the Tenant amended his Application for Dispute Resolution to include a claim for double the security deposit.

At the outset of the Hearing, the Tenant testified that he mailed the Notice of Hearing documents by registered mail on April 4, 2010 to the Landlord at the address where the Landlord carries on business. The Tenant provided a copy of the registered mail receipt and the tracking number in evidence.

The Tenant testified that he mailed the amended Application for Dispute Resolution, by registered mail, to the Landlord on April 22, 2010. The Tenant provided a tracking number for the document.

The Tenant testified that both packages were returned to him, unclaimed by the Landlord.

I am satisfied that the Tenant served the Landlord with the Notice of Hearing documents and his amended Application in accordance with the provisions of Section 89(1)(c) of the Residential Tenancy Act (the "Act"). Service in this manner is deemed effective 5 days after mailing the documents whether or not the recipient chooses to accept service of the documents. Despite being deemed served with the documents, the Landlord did not sign into the teleconference and the Hearing proceeded in his absence on its merits.

### **Issues to be Decided**

- Is the Tenant entitled to a monetary order for \$2,400.00 pursuant to the provisions of Section 38(6) of the Act?

### **Background and Evidence**

The Tenant gave the following testimony

The parties entered into a tenancy agreement on March 12, 2010. A copy of the tenancy agreement was entered in evidence. The tenancy agreement was a three month term lease, ending July 1, 2010. Rent was \$600.00 per month. The Landlord required the Tenant to pay first and last months' rent upon signing the agreement.

The Tenant paid the Landlord \$1,200.00 on March 12, 2010.

The Landlord rented the rental unit to someone else on March 15, 2010, and asked the Tenant to accept another rental unit in the building for \$25.00 more per month. The Tenant told the Landlord that it was not the room the Tenant had agreed to rent and he asked for his deposit back. The Landlord told the Tenant he would not return his deposit.

On April 4, 2010, the Tenant provided the Landlord with a letter, dated March 31, 2010, stating that he wanted his deposit refunded. A copy of the letter was entered in evidence. The Landlord has not returned the Tenant's deposit.

### **Analysis**

The Landlord required the Tenant to pay first and last month's rent upon signing a tenancy agreement. I find that this payment was a security deposit. A security deposit is not the property of the Landlord. It is held in trust by the Landlord for the Tenant, to be applied in accordance with the provisions of Section 38 of the Act.

I find that the Landlord did not provide the Tenant with possession of the rental unit and therefore the Tenant was entitled to return of the security deposit.

The letter dated March 31, 2010 contains the Tenant's forwarding address. I accept the Tenant's testimony that he provided the Landlord with written notification of his forwarding address on April 4, 2009.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

A copy of Section 38 of the Act accompanies this decision.

The Landlord did not return the security deposit within 15 days of receipt of the Tenant's forwarding address, nor did the Landlord file for dispute resolution against the security deposit.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit. Therefore, the Tenant is entitled to a monetary order for double the security deposit, in the amount of \$2,400.00. No interest has accrued on the security deposit.

The Tenant has been successful in his application and is entitled to recover the cost of the filing fee from the Landlord.

## **Conclusion**

I hereby grant the Tenant a Monetary Order against the Landlord in the amount of \$2,450.00. This Order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) 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 27, 2010.

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Dispute Resolution Officer