

## **DECISION**

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

### **Introduction**

This application was brought by the tenant seeking a Monetary Order for return of a security deposit in double on the grounds that the landlord did not return it or make application to make claim upon it within 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.

As a preliminary matter, the application is brought in the name of an individual person and names an individual person as respondent, both of whom have used their original names and anglicized versions in material documents. However, the rental agreement in question is between two corporate entities.

With the applicant tenant's consent, and in consideration of the landlord having been served both as individual person and corporate entity, and according to the landlord, having represented herself as sole principal of the respondent corporation, I have joined both corporate entities in the style of cause.

Despite having been served as person and corporation, and through her employee, the landlord did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her absence.

### **Issues to be Decided**

By its length and nature, the tenancy in question requires examination as to jurisdiction.

If jurisdiction is found, 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 tenancy was created by way of a fixed term rental agreement signed on January 11, 2010 which states that the tenancy started on that day but set a fixed term from February 8, 2010 to March 1, 2010. Rent was \$5,500 per month and the tenant paid a security deposit and pet damage deposit of \$1,000 each.

Documentary evidence submitted by the tenant indicates that this was one of four such agreements signed between the parties to accommodate staff members of the corporate tenant during their work at the 2010 Winter Olympics.

During the hearing, the tenant gave evidence that the rental unit was vacated on March 1, 2010 as agreed. The tenant also submitted copies of registered letters to the landlord at all available addresses requesting return of security deposits and providing current and forthcoming addresses for their return.

The tenant stated that, at the time of the hearing, the security and pet damage deposit associated with the subject unit had not been returned and now claims return of both in double. The tenant has also filed a complaint with police alleging fraudulent misrepresentation concerning this and the other tenancies and Olympic event tickets.

### **Analysis**

As to the question of jurisdiction, I have taken into account section 4(e) of the *Act* which excludes “living accommodation occupied as vacation or travel accommodation” from the provisions of the *Act*. This consideration was prompted by unusually short-term of the tenancy and the nature of the Olympic events.

However, I find that the contract is a rental agreement under the *Act* because:

1. By using the standard form rental agreement provided by the Residential Tenancy Branch, the landlord clearly represented the offering of the rental unit as falling within the provisions of the *Residential Tenancy Act*;
2. By demanding security and pet damage deposits in the portion of the standard form designed for that purpose, the landlord clearly represented that those deposits were taken in accordance with protections afforded by the *Act*;
3. The fact that the tenant’s employees were working guests and paid no fees to the tenant supports the tenant’s position that the contract was a fixed term residential tenancy agreement and not a commercial tenancy.

As to the security and pet damage deposits, 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, unless the expressly agrees otherwise, the landlord must return the deposits to the tenant or make application for dispute resolution to claim upon them.

In this matter, I find as fact that the landlord did not make application to claim the deposits within 15 days of the end of the tenancy and I accept the evidence of the tenant that the forwarding address had been proved to in writing by the letters of March 14, 2010.

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 and pet damage deposits.

Therefore, I find that the tenant is entitled to return of double the \$1,000 security and double the \$1,000 pet damage deposit. I further find that the tenant is entitled to recover the 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 security deposit (no interest due)	\$1,000.00
To double the security deposit	1,000.00
To return the pet damage deposit	1,000.00
To double the pet damage deposit	1000.00
Filing fee	50.00
<b>TOTAL</b>	<b>\$4,050.00</b>

## Conclusion

The tenant's copy of this decision is accompanied by a Monetary Order for **\$4,050.00** enforceable through the Provincial Court of British Columbia, for service on the landlord.

August 27, 2010