

DECISION

Dispute Codes: MNSD and FF

Introduction

This application was brought by the tenant seeking return of his security and pet damage deposits in double on the grounds that the landlords did not return them or make application to claim on them with 15 days of the latter of the end the tenancy or receipt of the tenant's forwarding address. The tenant also seeks to recover the filing fee for this proceeding from the landlords.

Issues to be Decided

This application requires a decision on whether the tenant is entitled to a Monetary Order for return of his deposits and whether the amount should be doubled, and whether the tenant should recover the filing for this proceeding.

Background and Evidence

This tenancy began on November 1, 2008 and ended on May 1, 2010. Rent was \$1,800 per month and the landlords hold a security deposit of \$900 and a pet damage deposit of \$150 paid on or about November 1, 2008.

At the same time, the landlords required a “non refundable cleaning deposit” of \$150. In so doing, they breached section 19 of the *Act* (security deposit must not exceed one-half month’s rent) and section 20(e) of the *Act* (no automatic right to retain a portion of the deposit). Section 6(3) of the *Act* provides that an agreement of a term that is inconsistent with the *Act* is enforceable.

During the hearing, the tenant gave evidence that – on the assumption that the landlords had the right to retain the \$150 cleaning deposit, he agreed that they could retain up to an additional \$300.

The landlords stated that their damages were greater than that, and that the tenant had agreed to a larger figure, but there is no written and signed corroboration of that contested statement.

The landlords did not contest having received the tenants forwarding address and they concur that they did not make an application for Dispute Resolution to make a claim on the deposits.

Analysis

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.

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...”

In this matter, I find as fact that the landlords did not make application to claim the deposits within 15 days of the end of the tenancy or receipt of the tenant's forwarding address. As the tenant stated that he agreed to the landlord's retaining \$300 on the assumption that the already had a right to the \$150 (non-refundable cleaning deposit, I find that the tenant agreed to the landlords retaining \$450.

However, I find that the landlords breached section 38(1) of the *Act* and must return double the portion contested by the tenant, plus interest on the bare deposits plus \$50 for reimbursement of the tenant's filing fee, an amount calculated as follows:

Security deposit	\$ 900.00
Pet damage deposit	150.00
Cleaning deposit (part of security or pet damage deposit under the <i>Act</i>)	150.00
Sub total	\$1,200.00
Less retained amount to which tenant agreed	- 450.00
Unauthorized portion of deposits retained	750.00
To double unauthorized portions of deposits retained per S. 38(6)	750.00
Interest on bare deposits (\$1,200) from November 1, 2008 to date	3.00
Filing fee	50.00
TOTAL amount landlords owe to tenant	\$1,553.00

Conclusion

The tenant's copy of this decision is accompanied by a Monetary Order for **\$1,553.00**, enforceable through the Provincial Court of British Columbia, for service on the landlords.

October 12, 2010