

DECISION

Dispute Codes: MNSD and FF

Introduction

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

Issues to be Decided

This application requires a decision on whether the tenant is entitled to a Monetary Order for the unreturned portion of his deposit 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, 2009 under a fixed term rental agreement to April 30, 2010 at which time the tenancy ended. Rent was \$4,500 per month except for February 2010 when it was \$12,000.

The landlord held a security deposit of \$2,400 which was identified on the rental agreement as \$2,250 in security deposit and \$150 cleaning deposit, which creates a breach of section 19 of the *Act* (deposit more than ½ month's rent) or section 20(b) (require more than one deposit).

During the hearing, the tenant gave evidence that the landlord had returned \$1,950 of the deposit in May or June of 2010 but that she had retained \$450 of it without his consent and without having made application for dispute resolution to claim upon it.

The tenant stated that the landlord had not arranged for or conducted a move-out condition inspection with him.

The landlord concurred that she retained \$450 of the deposit and that she had not made an application to make claim on it. She stated that there had been some delay as she had attempted to communicate with the tenant to bring damages to his attention and gain his consent to retain the \$450.

The landlord concurred that she had not provided the tenant with final notice for the move-out inspection report on the prescribed form as required under *Regulation* 17(2)(b).

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 must find as fact that the landlord did not make application to claim the deposit within 15 days of the end of the tenancy.

While neither party submitted documentary evidence of the tenant having provided his forwarding address to the landlord, I find by virtue of the fact that the landlord mailed the tenant a cheque for \$1,950 that she did, in fact, have his mailing address in May or June 2010.

Therefore, I find that the landlord must return the unreturned portion of the security deposit in double.

Having found merit in the application, I 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 retained portion of security deposit (no interest due)	\$450.00
To double retained portion of security deposit per s. 38(6)	450.00
Filing fee	50.00
TOTAL	\$950.00

Conclusion

The tenant's copy of this decision is accompanied by a Monetary Order for **\$950.00**, enforceable through the Provincial Court of British Columbia, for service on the landlord.

November 4, 2010