

## **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 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 return 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 December 1, 2009 under a fixed term rental agreement set to end on November 30, 2010, breached by the tenant when he gave notice to end the tenancy for May 31, 2010.

Rent was \$1,140 per month and the landlord held a security deposit of \$550 and a pet damage deposit of \$550, both paid on November 29, 2009.

The rental agreement, the tenant's application and the move-out condition inspection report all acknowledge that the tenant forfeit's \$500 in liquidated damage for leaving the fixed term agreement early.

The landlord's representative made explanation that the landlord had intended to make application to claim on the deposits within the prescribed time limit but that an oversight had resulted in their not doing so.

## **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 and pet damage deposits or make application to claim upon them.

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 on the deposits or return them within 15 days of receiving the tenant's forwarding address and request for return of the balance of the deposits.

Therefore, I find that the tenant is entitled to return of the contested portion of the security and pet damage deposits, after the agreed upon liquidated damages charge was deducted from them.

Having found that the application has succeeded on its merits, 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.

Security deposit	\$ 550.00
Pet damage deposit	<u>550.00</u>
Sub-total of deposits paid	\$1,100.00
Less liquidated damages as per the rental agreement	<u>- 500.00</u>
Sub-total	\$ 600.00
To double the contested portion of the deposits	600.00
Filing fee	<u>50.00</u>
<b>TOTAL</b>	<b>\$1,250.00</b>

No interest was prescribed by Regulation for the material period.

## **Conclusion**

The tenant's copy of this decision is accompanied by a Monetary Order for **\$1,250.00** enforceable through the Provincial Court of British Columbia, for service on the landlord.

December 17, 2010