

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an application by the tenant for return of double the security deposit and recovery of the filing fee. Both parties participated in the conference call hearing.

Issues to be Decided

Is the tenant entitled to any of the above under the Act.

Summary of Background and Evidence

This fixed term tenancy started April 1, 2010 with rent of \$825.00, the tenant paid a security deposit of \$412.50.

The tenant testified that she had provided the landlord with her forwarding address in writing, September 30, 2010 on the move-out inspection report. The tenant stated that she did not agree with the landlord's move-out inspection and felt that any damage to the unit or marks on the floor were normal wear and tear.

The September 30, 2010 move-out inspection report is signed by both parties and does not reflect the tenant authorizing the landlord to keep any or part of the security deposit and the tenant's forwarding address is clearly noted. The tenant stated that she did return to the rental unit on October 1, 2010 to bring back the cable box but the landlord was not on site. The tenant is requesting double the security deposit back in this application.

The landlord testified that they did the move-out inspection with the tenant on September 30, 2010 and that both parties signed the move-out inspection report at that time. The landlord stated that they wanted to complete a second inspection the following day after the floors had been cleaned to better determine if the floors were damaged. The landlord stated that the tenant did not make herself available for the second move-out inspection on October 1, 2010. To date the landlords have not made application through this office to keep any part of the security deposit or claim damages.

Law

Residential Tenancy Act Section 38 **Return of security deposit and pet damage deposit**

- (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
 - (a) the date the tenancy ends, and
 - (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:
 - (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
- (2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.
- (3) A landlord may retain from a security deposit or a pet damage deposit an amount that
 - (a) the director has previously ordered the tenant to pay to the landlord, and
 - (b) at the end of the tenancy remains unpaid.
- (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
 - (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
 - (b) after the end of the tenancy, the director orders that the landlord may retain the amount.
- (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.
- (6) If a landlord does not comply with subsection (1), the landlord
 - (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.
- (7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.
- (8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) *[service of documents]* or give the deposit personally to the tenant.

Analysis

Based on the documentary evidence and undisputed testimony of the parties, I find on a balance of probabilities that the tenant has met the burden of proving that she has grounds for entitlement to return of double the security deposit.

I find that the tenant has established a monetary claim for \$825.00 in return of double the security deposit.

The tenant is also entitled to recovery of the \$50.00 filing fee.

Conclusion

I find that the tenant has established a monetary claim for **\$825.00** in return of double the security deposit. The tenant is also entitled to recovery of the \$50.00 filing fee.

A monetary order in the amount of **\$875.00** has been issued to the tenant and a copy of it must be served on the landlord. If the amount is not paid by the landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: January 14, 2011

Dispute Resolution Officer