

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the tenant for return of the security deposit and recovery of the filing fee. The tenant participated in the conference call hearing but the landlord did not. The tenant presented evidence that the landlord was served with the application for dispute resolution and notice of hearing by registered mail. I found that the landlord had been properly served with notice of the tenant's claim and the date and time of the hearing and the hearing proceeded in their absence.

Issues to be Decided

Are the tenants entitled to any of the above under the Act.

Summary of Background and Evidence

This tenancy started July 15, 2008 with rent of \$1200.00, the tenant paid a security deposit of \$600.00.

The tenant testified that on August 27, 2010 they provided the landlord by email, their forwarding address and a request to return their \$600.00 security deposit and \$4.18 in interest. The tenant stated when the security deposit was not returned, upon advice from this office, the tenants sent the landlord the same information by registered mail. The registered mail was not claimed by the landlord and was returned to the tenants by Canada Post. The tenant's then hand delivered the same information and put it in the landlord's mail box at his residence. The tenant stated that to date the landlord has not returned the \$604.18 security deposit and interest owed to them.

The tenants sent the landlord the documents for this hearing by registered mail on October 18, 2010. The registered mail was not claimed by the landlord and was returned to the tenants by Canada Post.

The tenant testified that as the landlord still has not returned the security deposit, the tenant's in this application are requesting double the security deposit back per the Act.

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 tenants, I find on a balance of probabilities that the tenants have met the burden of proving that they have grounds for entitlement to a monetary order for return of double the security deposit and interest owed.

As for the monetary order, I find that the tenants have established a claim for \$1204.18.

The tenants are also entitled to recovery of the \$50.00 filing fee.

Conclusion

I find that the tenants have established a monetary claim for \$1204.18. The tenants are also entitled to recovery of the \$50.00 filing fee.

A monetary order in the amount of **\$1254.18** has been issued to the tenants 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 27, 2011

Residential Tenancy Branch