

DECISION

Dispute Codes: MNSD and FF

Introduction

This application was brought by the tenants seeking return of their security deposit in double on the grounds that the landlords 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 tenants forwarding address. The tenants also seek to recover the filing fee for this proceeding from the landlord.

Issues to be Decided

This application requires a decision on whether the tenants are entitled to a Monetary Order for return of their security deposit, whether the amount should be doubled, and whether the tenants should recover the filing for this proceeding.

Background and Evidence

This tenancy began on November 15, 2009 and ended on September 4, 2010 pursuant to a Notice to End Tenancy for landlord use. Rent was \$1,200 per month plus care of livestock duties and the landlords held a security deposit of \$600 paid on October 31, 2009.

Documentary evidence and testimony of the parties was that the landlords returned \$421.27 of the security deposit by cheque dated September 17, 2010 but retained \$128.73 for repair of minor damages for which they felt the tenants were responsible.

The landlords conceded that they had erred as this had been their first experience as landlords and they had not familiarized themselves with the legislation.

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 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 landlords did not make application to claim on the deposit or return it within 15 days of the end of the tenancy.

While the tenants submitted that they were now entitled to return an amount equal to the whole deposit plus the contested portion.

I find, however, that the amount of the security deposit under contest is the amount held by the landlords after the expiry of the 15-day time limit set by section 38(1) of the *Act*.

Therefore, I find that the tenants are entitled to return of the contested portion of the security deposit in double. As the tenants' application has succeeded, I further find that they are entitled to recover the filing fee for this proceeding from the landlords.

Thus, I find that the landlords owe to the tenants an amount calculated as follows.

Security deposit	\$600.00
Less portion returned to tenants	- 471.27
Sub-total retained by landlords	\$128.73
To double the contested portion of the deposit	128.73
Filing fee	50.00
TOTAL	\$307.46

No interest was prescribed by Regulation for the material period.

Conclusion

The tenants' copy of this decision is accompanied by a Monetary Order for **\$307.46** enforceable through the Provincial Court of British Columbia, for service on the landlords.

January 26, 2011