

Decision

Dispute Codes: MNSD, FF

Introduction

This hearing dealt with an application by the tenants for the double return of their security deposit, in addition to recovery of the filing fee. Both tenants participated in the hearing and gave affirmed testimony.

Despite mailing of the application for dispute resolution and notice of hearing by way of registered mail, the landlords did not appear. Included in the tenants' evidence is the Canada Post tracking number for the registered mailing. Section 90 of the Act provides that a document served by mail is "deemed to be received" on "the 5th day after it is mailed."

Issues to be decided

- Whether the tenants are entitled to either of the above under the Act

Background and Evidence

Pursuant to a written tenancy agreement, the tenancy began on or about July 9, 2009. Monthly rent of \$1,200.00 was due and payable on the first day of each month, and a security deposit of \$600.00 was collected.

The landlords issued a 2 month notice to end tenancy for landlord's use of property dated June 28, 2010. Thereafter, the tenants vacated the unit on July 31, 2010. By letter "To Whom it may Concern" dated June 28, 2010, landlord "SC" confirmed that he would be moving into the unit effective September 1, 2010.

In relation to the return of their security deposit, by letter dated September 7, 2010 and sent by registered mail, the tenants informed the landlords of their forwarding address. Included in the tenants' evidence is the Canada Post tracking number for the registered mailing. The tenants confirmed that the letter was received by the landlords, however, the landlords have not returned the tenants' security deposit.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

Section 38 of the Act speaks to **Return of security deposit and pet damage deposit**, and provides in part as follows:

38(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.

Further, section 38(6) of the Act provides:

38(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.

Based on the documentary evidence and the affirmed / undisputed testimony of the tenants, I find that the landlords did not either return the tenants' security deposit or file an application for dispute resolution, within 15 days after being informed by the tenants of their forwarding address. Accordingly, I find that the tenants have established entitlement to the double return of their security deposit in the amount of \$1,200.00 (2 x \$600.00).

Further, as the tenants have succeeded in their application, I find that they are also entitled to recover the \$50.00 filing fee.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of \$1,250.00 (\$1,200.00 + \$50.00). Should it be necessary, this

order may be served on the landlords, filed in the Small Claims Court 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*.

DATE: February 21, 2011

Residential Tenancy Branch