



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, FF

Introduction

This was an application by the tenant for the return of his security deposit, including double the amount of his deposit. The hearing was conducted by conference call. The tenant participated as did the landlord and her daughter who acted as her spokesperson.

Issue(s) to be Decided

Is the tenant entitled to the return of his security deposit including double the amount of the deposit?

Background and Evidence

The rental unit is a basement suited in a residential house in Vancouver. The landlord and her family occupy the upper portion of the house. The tenancy began on or about December 16, 2009. There is no written tenancy agreement. Monthly rent was \$600.00 and the tenant paid a \$300.00 security deposit on December 6, 2009.

In June 2010 the tenant received a visitor who occupied the rental unit with him. The visitor was a smoker and the landlord complained about her smoking in the rental unit. The tenant testified that the landlord repeatedly complained about smoke from the rental unit although, according to the tenant his visitor smoked outside the rental unit and they tried to keep smoke out of the basement suite. The tenant testified that the landlord pressured him to move and he vacated the rental unit at the landlord's request on July 1, 2010.

The tenant sent a letter to the landlord on July 26, 2010 and again by registered mail on August 12, 2010. The letter provided his forwarding address and requested the return of his security deposit.

The tenant did not receive his deposit from the landlord and on September 7, 2010 he filed the application for dispute resolution that is the subject of this hearing.

At the hearing the landlord's representative testified that he rental unit was a no smoking unit and despite that the tenant's visitor smoked inside the rental unit. The smoke travelled directly upstairs and seriously affected the landlord and her family, all of whom are allergic to smoke. She said the landlord lost revenue because the tenant moved out without giving notice and the landlord was unable to re-rent the unit for the month of July.

Analysis and Conclusion

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an Order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

I am satisfied that the tenant provided his forwarding address in writing, and that he served the landlord with documents notifying the landlord of this application as required by the legislation. The security deposit was not refunded within 15 days as required by



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the legislation and the doubling provision of section 38(6) therefore applies. I grant the tenant's application and award him the sum of \$\$600.00. This includes interest on the original deposit amount. The tenant is entitled to recover the \$50.00 filing fee for this application for a total claim of \$\$650.00 and I grant the tenant a monetary order in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that Court.

Dated: January 05, 2011.
