

## **Decision**

**Dispute Codes:** MNDC, 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. One of the tenants participated in the hearing and gave affirmed testimony.

Despite mailing of the application for dispute resolution and notice of hearing to the landlord by way of registered mail, the landlord did not appear. Included in the tenants' evidence is the Canada Post tracking number for the registered mailing.

### **Issues to be decided**

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

### **Background and Evidence**

Pursuant to a written tenancy agreement, the tenancy began on September 1, 2009 and ended on September 30, 2010. Monthly rent was \$950.00, and a security deposit of \$475.00 was collected on August 13, 2009. A move-in condition inspection and report were completed on September 1, 2009.

On August 30, 2010, the tenants gave notice to the landlord of their intent to end the tenancy effective September 30, 2010. The tenant testified that she gave the landlord the forwarding address in writing on September 15, 2010. A move-out condition and inspection report were completed on September 30, 2010.

Thereafter, the landlord retained \$275.00 from the tenants' security deposit and sent the tenants a cheque by mail in the amount of the balance of \$200.00 (\$475.00 - \$275.00). The cheque is dated November 4, 2010, the letter to which it was attached is dated November 10, 2010, and the postmark on the envelope in which the cheque was mailed is dated November 18, 2010.

The tenant testified that while their surnames were spelled correctly on the envelope in which the cheque was enclosed, their surnames were both misspelled on the cheque. As a result, in anticipation of their inability to cash such a cheque, they have not cashed the cheque.

### **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/](http://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 states:

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 tenant, I find that the landlord neither repaid the security deposit, nor filed an application for dispute resolution within 15 days after the end of tenancy which was September 30, 2010. Accordingly, I find that the tenants have established entitlement to the double return of their security deposit in the amount of \$950.00 (2 x \$475.00).

As the tenants have succeeded in their application, I find they are also entitled to recovery of 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 **\$1,000.00** (\$950.00 + \$50.00). Should it be necessary, this order may be served on the landlord, 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: March 1, 2011

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Residential Tenancy Branch