

DECISION

Dispute Codes: MNSD and FF

Introduction

This application was brought by the tenant seeking return of a portion of his security deposit retained by the landlord without his consent, and recovery of the filing fee for this proceeding.

As a preliminary matter, the tenant had named two individual persons as respondents on this application while the rental agreement was with a limited company in which the named respondents are principals. With consent of the parties, I have amended the application to name the corporate landlord as respondent.

Issues to be Decided

This application requires a decision on whether the tenant is entitled to a monetary award for return of his security deposit, whether that amount is requested in double, and whether the tenant is entitled to recover his filing fee from the respondent landlord.

Background and Evidence

This tenancy began on May 8, 2010 under a 12-month fixed term agreement which ended on April 30, 2011. Rent was \$4,000 per month and the landlord held a security deposit of \$4,000 paid on April 26, 2010.

During the hearing, the tenant submitted evidence that the landlord had returned \$2,722.38 off his security deposit on May 5, 2011 and had retained \$1,277.62. The tenant had consented to the landlord retaining \$752.88 of that amount, but he contests \$524.74 which was retained without his consent.

The contested portion was made up of \$396 for 9 hours of wall cleaning at \$44 per hour, \$18.94 for cleaning pads and \$109.80 for a second carpet cleaning.

While the landlord has submitted evidence in support of the additional hold back, such evidence cannot be taken into account in the present hearing which was convened on the tenant's application for return of the deposit under section 38 of the *Act*.

The landlord was and remains at liberty to make application for damages under section 67 of the *Act* but claims on the security deposit must be brought by the landlord's application within 15 days of the end of the tenancy.

Analysis

Section 38(1) of the *Act* allows a landlord 15 days from the latter of the end of the tenancy or receipt of the tenant's forwarding address to return a deposit or file for dispute resolution to make claim against it.

Section 38(6) of the *Act* states that, if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the deposit.

In the present matter, I find that the landlord did not comply with section 38(1) by making application for dispute resolution to claim on the deposit or return the full amount within the 15 days allowed.

Therefore, I find that the landlord owes the tenant double the \$524.74 of the security deposit which was withheld without consent.

As the application has succeeded on its merits, I find that the tenant is entitled to recover the filing fee for his proceeding from the landlord.

Thus, I find that the landlord owes to the tenant an amount calculated as follows:

Security deposit paid April 26, 2010 (No interest due)	\$4,000.00
Less amount returned on May 5, 2011	- 2,722.38

Less amount retained with consent	- 752.88
Contested portion of deposit retained without consent	\$ 524.74
To double unreturned portion as per s. 38(6)	524.74
Filing fee	50.00
TOTAL	\$1,099.48

Conclusion

The tenant's copy of this decision is accompanied by a Monetary Order for \$1,099.48, enforceable through the Provincial Court of British Columbia, for service on the landlord.

August 22, 2011