

DECISION

Dispute Codes: MNSD and FF

Introduction

This application was brought by the tenant seeking return of her security deposit in double on the grounds that the landlord did not return it or make application to claim upon it within 15-days of the latter of the end of the tenancy or receipt of her forwarding address. The tenant also requested recovery of the filing fee for this proceeding from the landlord.

Issues to be Decided

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

Background and Evidence

This tenancy began on August 1, 2005 and ended March 31, 2011. Rent was \$900 per month and the landlord holds a security deposit of \$450 paid on July 22, 2005.

During the hearing, the landlord gave evidence that he had not returned the security deposit because he felt that there were damage and losses arising from the tenancy that exceeded the value of the deposit.

The landlord had submitted a package of evidence in support of his claims (not provided to the tenant as required) but his claims cannot be considered in the present hearing which was convened on the tenant's application for return of the deposit. The landlord was, and remains, at liberty to make an application if he believes there were damages and losses for which the tenant is responsible.

As a matter of note, the rental agreement states that the landlord does not pay interest on the deposit. As the parties were advised, section 5 of the Act provides that any part of an agreement that disagrees with the Act is not enforceable.

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(1)(c) requires that the deposit be returned with interest at the rate prescribed by *regulation*.

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 by return the full amount within the 15 days allowed.

Therefore, I find that the landlord owes the tenant double the amount of the security deposit, interest on the deposit amount, and recovery of the filing fee for this proceeding, calculated as follows:

Security deposit paid July 22, 2005	\$450.00
Interest due from July 22, 2005 to date	15.94
To double unreturned deposit as per s. 38(6)	450.00
Filing fee	50.00
TOTAL	\$965.94

Conclusion

The tenant's copy of this decision is accompanied by a Monetary Order for \$965.94, enforceable through the Provincial Court of British Columbia, for service on the landlord.

September 1, 2011