

DECISION

Dispute Codes: MNSD and FF

Introduction

This application was brought by the tenant seeking return of his 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.

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 and whether that amount is to be doubled.

Background and Evidence

This tenancy began on September 25, 2008. Rent was \$300 per month and the landlord holds a security deposit of \$200 paid on or about September 25, 2008. The tenancy ended on July 31, 2010 after the landlord advised the tenant by an email dated May 19, 2010 that he wished to use the rental unit starting August 1, 2010 to accommodate a nephew who was moving to the city.

The parties concur that the tenant provided the landlord with his forwarding address at or shortly after the end of the tenancy and that the deposit has not been returned.

The rental unit is one of four rental rooms in the downstairs portion of the landlord's home. The landlord's home is self contained with its own kitchen and washroom and the downstairs tenants share their own kitchen and washroom. The landlord stated that the washer and dryer are used by the landlord's family and tenants.

The landlord stated that he believed the tenancy was one not covered by the *Residential Tenancy Act* as he and his family used common areas in the downstairs suite, and he sometimes watched television in the tenants' area.

The tenant contested that evidence and noted that in the nearly two years he had lived in the building, he had only once known one of the tenants to use the landlord's upstairs facilities, an occasion in which an ill tenant had urgent need of a washroom and the one in the rental suite was occupied.

The landlord submitted identical letters signed by other tenants stating that the landlords would come in regularly through the centre door to do laundry, clean, use the washroom and watch television.

Analysis

Section 4(c) of the *Act* states that, among other types of tenancies, it does not apply to, "living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation."

I find that exclusion applies to accommodations in which the tenant shares the landlord's personal kitchen and bathroom and recognizes that the landlord is sharing their primary residence. I find that the tenancy in question does not meet that criterion. The landlord's primary residence is upstairs, is self contained and there is no material sharing of the landlord's personal facilities by the tenants. Therefore, I find that this tenancy is covered by the *Act*.

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 returning the full amount within the 15 days allowed.

Therefore, I find that the landlord owes the tenant double the amount of the security deposit and interest on the deposit amount.

Security deposit paid on or about September 25, 2008	\$200.00
Interest due (September 25, 2008 to date)	.80
To double unreturned deposit as per s. 38(6)	200.00
TOTAL	\$400.80

Conclusion

The tenant's copy of this decision is accompanied by a Monetary Order for **\$400.80**, enforceable through the Provincial Court of British Columbia, for service on the landlord.

September 28, 2011