



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD and FF

Introduction

This application initiating this hearing was brought by the tenant on October 11, 2011 seeking a Monetary Order for return of his security deposit on the grounds that the landlord did not return it or make application to claim against it as required under section 38 of the *Act*.

Despite having been served with the Notice of Hearing sent by registered mail on October 13, 2011, the landlord did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his absence.

Issues to be Decided

This application requires a decision on whether the tenant is entitled to a Monetary Order for return of the security deposit and whether that amount should be doubled.

Background and Evidence

This tenancy ran from August 1, 2011 to August 31, 2011, although the tenant stated he moved in a few days early and paid a per diem for that portion of the tenancy. Rent was \$700 per month and the landlord holds a security deposit of \$350 according to the tenant.

During the hearing, the tenant stated that he had given the landlord notice at the beginning of the tenancy that he would be ending the tenancy on August 31, 2011. He stated that he had asked toward the end of the tenancy if he could extend it for a short while, but the landlord advised that he had already committed to a new tenant.

While he stated that he had provided the landlord with his forwarding address earlier, the tenant submitted copies of several email exchange between himself and the landlord, one of which, dated September 23, 2011, included his forwarding address and a request for return of the deposit.

In another email dated September 13, 2011, the landlord advises the tenant:

“I am sorry to tell you that I will not have your money by the 15th because I have just issued a big payment to both Fortis BC (previously Terasen Gas) and Shaw due to notices of disconnection from both. However, I am waiting for an income tax refund from Canada Revenue Agency from where I can pay you your security deposit.”

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 security deposit or file for dispute resolution to make claim against it unless the tenant has agreed otherwise in writing as per section 38(4).

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

In the present matter, I find that the landlord retained the \$350 without consent of the tenant or making application to make claim on it within 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address.

Therefore, I find that the tenant is entitled to return of the security deposit it in double.

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

Thus, I find that the tenant is entitled to a Monetary Order calculated as follows:

Security deposit (No interest due)	\$350.00
Filing fee	50.00
TOTAL	\$750.00

Conclusion

The tenant's copy of this decision is accompanied by a Monetary Order for **\$750.00**, enforceable through the Provincial Court of British Columbia, for service on the landlord.

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*.

Dated: December 22, 2011.

Residential Tenancy Branch