



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 tenants on November 2, 2011 seeking a Monetary Order for return of a portion of their security deposit that was retained by the landlord without their consent and without the landlord having made application to claim on it.

Issues to be Decided

This application requires a decision on whether the tenants are entitled to a monetary award for return of the contested portion of their security deposit and whether that amount should be doubled.

Background and Evidence

This tenancy ran from October 1, 1999 to July 31, 2011. Rent was \$780 per month and the landlord held a security deposit of \$347.50 paid on October 1, 1999.

During the hearing, the parties agreed that the landlord had returned \$200 of the deposit at the end of the tenancy.

The landlord's agent who is new to the property stated that he had a copy of a document which states that the tenants had agreed that the landlord could retain all but \$200 of the deposit and accrued interest, but he stated that the document did not bear either of the tenants' signatures. The landlord also stated that tenants' file showed that they had provided their forwarding address two weeks prior to 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 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(1)(c) requires that the deposits 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) 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 did retain \$147.50 of the deposit plus interest on the whole deposit without consent of the tenants and without having made application for dispute resolution to claim against it.

Therefore, I find that the tenants are entitled to return of the unreturned portion of the security deposit in double plus interest on the base amount.

As the application has succeeded on its merits, I further find that the tenants are entitled to recover the filing fee for this proceeding from the landlords.

Thus, I find that the tenants are entitled to a Monetary Order calculated as follows:

Security deposit	\$347.50
Balance withheld without consent	147.50
To double balance withheld without consent t	147.50
Interest on base deposit of \$347.50 from October 1, 1999 to date)	32.66
Filing fee	50.00
TOTAL	\$377.66

Conclusion

The tenant's copy of this decision is accompanied by a Monetary Order for **\$377.66**, 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: January 19, 2012.

Residential Tenancy Branch