



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD and FF

Introduction

This hearing was convened on the tenants' application of July 24, 2012 seeking return of their security deposit in double on the grounds that the landlord the landlord did not return it or make application to claim against it within the latter of 15 days from the end of the tenancy or receipt of the tenants' forwarding address

At the commencement of the hearing, the landlord asked for an adjournment on the grounds that she had recently been in the hospital and had not had time to prepare a response to the application and because she did not feel well enough to participate in the hearing. However, she then delivered a lengthy monologue before hanging up. Because of the peculiarities of speaker phones, the landlord did not hear my several attempts to pose the very few questions necessary to evaluate the request for adjournment.

For that reason, and because the tenants' claim deals with one of the simpler and clearly codified sections of the *Residential Tenancy Act*, I found it would unfairly prejudice the applicants and be unnecessarily inefficient to adjourn. Therefore, the hearing proceed after the landlord had hung up.

Issue(s) to be Decided

This matter requires a decision on whether the tenants are entitled to a Monetary Order for return of the security deposit and whether the amount must be doubled.

Background and Evidence

This tenancy began on October 1, 2010 under a two year fixed term agreement set to end on September 30, 2012. However, the male tenant is an employee of the Government of the United States which required that fixed term rental agreement include an addendum that provides for an earlier termination with two months' notice if the tenant is transferred. Such notice was given in the present matter and the tenancy ended on July 7, 2012.

Rent was \$3,500 per month and the landlord holds a security deposit of \$1,750 paid on September 24, 2012.

During the hearing, the attending tenant stated that she had presented the landlord with her forwarding address during a move-out condition inspection on July 8, 2012 and had even provided an addressed envelope for that purpose.

However, the tenant stated that the deposit was not returned within 15 days, leading to the present application of July 24, 2012.

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 security and pet damage deposits or file for dispute resolution to make claim against them 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 deposits. I would note that this section of the *Act* provides no discretion to the director's delegate on the question of doubling of the deposit.

In the present matter, I accept the evidence of the tenant that the deposit was not returned and I have no evidence that the landlord made application to claim against it within 15 days of the end of the tenancy.

Therefore, I must find that the tenants are entitled to a Monetary Order for return the security deposit in double in compliance with section 38(6) of the *Act*. As the application has succeeded on its merits, I find that the tenants are entitled to recover the filing fee for this proceeding from the landlord. The monetary award is calculated as follows:

To return security deposit	\$1,750.00
Filing fee	<u>50.00</u>
TOTAL	\$3,550.00

The landlord remains at liberty to make application for any damages or losses as may have arisen from the tenancy.

Conclusion

The tenants' copy of this decision is accompanied by a Monetary Order for **\$3,550.00**, 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: September 11, 2012.

Residential Tenancy Branch