



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened on the tenant's application of August 20, 2012 seeking a monetary award to double a portion of his security and pet damage deposits received late. The tenant also seeks to recover the filing fee for this proceeding from the landlord.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order to double the portion of the security deposit returned late and to recover the filing fee for this proceeding?

Background and Evidence

This tenancy began on May 15, 2010. Rent was \$850 per month plus \$20 parking. The landlord held security and pet damage deposits of \$425 each paid on May 6, 2012. The tenancy ended on July 31, 2012.

As verified by the rental agreement signed on May 6, 2010, this was a co-tenancy which the other tenant vacated in January of 2011. The tenant stated that he had a copy of a document by which his co-tenant gave notice that she was leaving the tenancy, but the tenant stated that document did not include the landlord's signature.

The tenant submitted into evidence a copy of the move-out condition inspection report completed on July 31, 2012, and in which the parties agreed that the landlord would retain \$182 from the deposits which totalled \$850, and would return \$688.

Canada Post tracking information shows that the cheque was mailed on August 19, 2012, four days after the 15-day time limit set by section 38(1) of the *Act*, leading to his application for an award to double the amount as provided for at section 38(6).

The landlord submitted into evidence a copy of a cheque for the \$688 made payable to the tenant dated August 10, 2012 but which erred in providing the wrong address, imprinted on the cheque.

When the tenant advised the landlord on August 16, 2012 that he had not received the deposit back, the error was tracked and corrected by a cheque sent by registered mail on August 19, 2012.

The landlord stated that the first cheque had been inadvertently sent to the forwarding address provided by the co-tenant who had left the tenancy earlier, an error that was remedied when the landlord learned of it.

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.

In the present matter, I find that the landlord attempted to return the residue of the deposit within the 15-day limit and was frustrated by the computer generating the address of the co-tenant, an understandable error corrected quickly when the landlord was advised of it.

In addition to the possibility that the co-tenant might still retain a right to a portion of the deposit, I must find that to award double the deposit under these circumstances would misinterpret the intention of section 38(6) which creates a strong sanction for landlords who willingly or carelessly ignore their obligation under section 38(1) of the *Act*.

I further find that an award to double the amount in these circumstances would constitute unjust enrichment. Therefore, the request for an amount that would double the amount of the deposit returned is dismissed without leave to reapply.

However, I find that the landlord's error did result in the tenant's loss of the \$50 filing fee required to make this application and order that the applicant may recover that amount from the landlord.

Conclusion

The tenants' copy of this decision is accompanied by a Monetary Order for **\$50.00**, 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: November 09, 2012.

Residential Tenancy Branch