



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC and FF

Introduction

This hearing was convened on the tenant's application of September 26, 2012 seeking a Monetary Order for return of her security deposit in double on the grounds that the landlord had not returned it or made application to claim against it within 15 days of the latter of the end of the tenancy or receipt of the tenants' forwarding address. The tenant also sought to recover the filing fee for this proceeding from the landlord.

Despite having been served with the Notice of Hearing sent by registered mail on September 28, 2012, the landlord did not call in to the number provided to enable his participation in the telephone conference call hearing. As the landlord had been served as required by section 89(1)(c) of the *Act*, the hearing proceeded in his absence.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for return of the security deposit and should the amount be doubled as required by section 38(6) of the *Act*.

Background and Evidence

This tenancy began on November 28, 2009 and ended on or about July 27, 2012. Rent was \$1,600 per month and the landlord holds a security deposit of \$750 paid at the beginning of the tenancy.

During the hearing, the tenant's agent gave evidence that the tenant had provided the landlord with her forwarding address in writing at the end of the tenancy and the landlord had expressed satisfaction with the condition of the rental unit.

The tenant had submitted an exchange of emails with the landlord in which the landlord variously promises to return the deposit, then attempted to engage the tenant in a dispute he was having with the strata council over a problem with the water or drainage system that appears to have nothing to do with the tenant.

As a matter of note, the rental agreement appears to include a number of provisions that are not permitted under the *Act* including a 10 per cent late fee, \$100 NSF fee, payment of the last month's rent at the beginning of the tenancy and a requirement for two month tenant notice to end the tenancy. Therefore, I have enclosed a copy of the publication, "A Guide for Landlords & Tenants in British Columbia," with the landlord's copy of this decision.

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, in the absence any evidence to the contrary, I must find that the landlord breached section 38(1) of the *Act* by retaining the security deposit without the tenant's consent or having made application to claim against it.

Therefore, I find that the tenant is entitled to a Monetary Order for return of the security deposit in double and, as the application has succeeded, to recover the filing fee for this proceeding from the landlord, calculated as follows:

To return security deposit (no interest due)	\$ 750.00
Filing fee	50.00
TOTAL	\$1,550.00

Conclusion

The tenants' copy of this decision is accompanied by a Monetary Order for **\$1,550.00**, 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: December 14, 2012.

Residential Tenancy Branch