

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This is an application under the *Residential Tenancy Act* (the “*Act*”) by the tenant for a monetary order for return of double her security deposit, and to recover the filing fee.

The tenant and the landlord attended the teleconference hearing. The tenant and landlord gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

Issue to be Decided

- Is the tenant entitled to the return of double the security deposit pursuant to section 38 of the *Act*?

Background and Evidence

A fixed term tenancy began on October 1, 2011 and by mutual agreement was extended on March 31, 2012. Rent in the amount of \$800.00 was due on the first day of each month. A security deposit of \$400.00 was paid by the tenant at the start of the tenancy.

The tenant vacated the rental unit on September 29, 2012. The tenant testified that she provided her forwarding address by e-mail on October 1, 2012. The landlord confirmed receiving that e-mail from the tenant with her forwarding address. The landlord testified that he has not returned the security deposit since the tenant vacated the rental unit.

The parties agreed that a move-in condition inspection report was completed, however, no move-out condition inspection report was completed. The parties agreed that the tenant did not sign over a portion of the security deposit and has applied for the return of double her security deposit back in accordance with section 38 of the *Act*.

The landlord stated that their usual way of communicating with the tenant was “texting” and the tenant stated that they would either “text” or e-mail. The landlord stated they would also communicate by phone, however; the tenant disputed that portion of the landlord’s testimony by stating that talked much on the phone.

The landlord has not submitted an application claiming towards the tenant's security deposit. The tenant filed her application for \$850.00 on October 24, 2012.

Analysis

Based on the above and the evidence provided during the hearing, and on a balance of probabilities, I find the following.

The parties agree that the landlord received the tenant's forwarding address in the October 1, 2012 e-mail from the tenant. Section 38 of the *Act* states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days** after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) **repay**, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) **make an application** for dispute resolution claiming against the security deposit or pet damage deposit.

(6) If a landlord **does not comply** with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

[emphasis added]

Based on the testimony of the parties, **I find** that the tenant's forwarding address was provided in writing to the landlord on October 1, 2012 and that the landlord received that e-mail. I accept that the usual way of communicating between the parties was either by text or e-mail. The landlord has not filed an application claiming towards the tenant's security deposit. Therefore, **I find** the landlord failed to repay the security deposit or

make an application within 15 days of October 1, 2012 which was the date the forwarding address was provided in writing via e-mail.

Furthermore, by failing to comply with section 35 of the *Act* by not completing a move-out condition inspection report, the landlord extinguished his right to claim towards the tenant's security deposit. Therefore, **I find** the tenant is entitled to double her original security deposit of \$400.00 which has not accrued interest to date for a total owing by the landlord of **\$800.00**.

I caution the landlord that a security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. The landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from an Arbitrator, or the written agreement of the tenant. In the matter before me, the landlord did not have any authority under the *Act* to keep any portion of the security deposit.

As the tenant's claim had merit, **I grant** the tenant the recovery of the filing fee in the amount of **\$50.00**.

I grant the tenant a monetary order pursuant to section 67 of the *Act*, in the total amount of **\$850.00** comprised of double the original security deposit and the filing fee. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I find the tenant is entitled to the return of double her security deposit. I grant the tenant a monetary order in the amount of \$850.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 25, 2013

