



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 April 11, 2013 seeking a Monetary Order for return of their security deposit retained without consent or without the landlord having made application for dispute resolution to claim against it. The tenants also sought to recover the filing fee for this proceeding from the landlord.

Issue(s) to be Decided

Are the tenants entitled to a Monetary Order for return of the security deposit and must the amount be doubled?

Background and Evidence

This tenancy ran from June 1, 2011 to April 30, 2012 under a fixed term rental agreement set to end on May 1, 2012. Rent was \$1,585 per month and the landlord holds a security deposit of \$800 paid at the beginning of the tenancy.

One of the tenants had provided the tenant with his forwarding address on April 29, 2012 with a request for return of the damage deposit. The landlord replied by email that he would not be returning the deposit because he had to take two loads to the dump, do extra cleaning and dispose of a barbeque and microwave left behind by the tenants.

The tenants advised the landlord by letter of February 5, 2013 of their new forwarding address, again requesting return of the deposit. The parties concurred during the hearing that deposit had not been returned and the landlord stated that he was not aware of the applicable requirements under the *Act*.

The landlord had submitted some evidence in support of his claim against the deposit, but in the absence of an application from the landlord, I cannot take his evidence into account on the tenants' application for return of the deposit.

The parties were offered the opportunity attempt a final settlement under section 63 of the *Act*, but were unable to do so.

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 tenants' forwarding address to return security and pet damage deposits or file for dispute resolution to make claim against them unless the tenants have 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 tenants double the amount of the deposits.

In the present matter, I find that the landlord breached section 38(1) of the *Act* by failing to return the deposit or to make application for dispute resolution to claim against it.

Therefore, I find that the landlord must return the security deposit in double.

As the application has succeeded on its merits, I find that the tenants are entitled to recover the \$50 filing fee for this proceeding from the landlord.

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

Security deposit (No interest due)	\$ 800.00
To double security deposit re section 38(6) of the <i>Act</i>	800.00
Filing fee	<u>50.00</u>
TOTAL	\$1,650.00

Conclusion

The tenants' copy of this decision is accompanied by a Monetary Order for **\$1,650.00**, enforceable through the Provincial Court of British Columbia, for service on the landlord.

The landlord remains at liberty to make application on his claims in damages.

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: July 03, 2013

Residential Tenancy Branch

