

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This matter dealt with an application by the Tenants for the return of double the security deposit and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on October 21, 2016. The registered mail was mailed to the correct address but was returned to sender unclaimed. The Tenants served the Landlord again on November 30, 2016 in person to the concierge at the Landlord's condo. The Tenants said the concierge confirmed the Landlord received the package. Based on the evidence of the Tenants, I find that the Landlord was served with the Tenants' hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord's absences.

### Issues(s) to be Decided

1. Are the Tenants entitled to the return of double the security deposit?

### Background and Evidence

This tenancy started on May 15, 2013 as a fixed term tenancy with an expiry date of July 30, 2016. The tenancy ended July 30, 2016 at the end of the fixed term and as agreed in the tenancy agreement. Rent was \$2,400.00 per month payable on the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$1,200.00 at the start of the tenancy.

The Tenants said they moved out of the rental unit on July 30, 2016 and gave the Landlord a forwarding address in writing on August 1, 2016. The Tenants said no move in or move out condition inspection reports were completed and signed. The Tenants continued to say they hired a cleaning company to clean the unit so it was left in excellent condition. The Tenants continued to say the Landlord said he would return the full \$1,200.00 security deposit but the Landlord did not. The Tenants said the Landlord retained \$300.00 for painting and sent a cheque to them for \$900.00. The Tenants have not cashed the cheque and they told the Landlord to cancel the cheque because they did not accept it as full settlement of their security deposit.

The Tenants requested double their security deposit  $\$1,200.00 \times 2 = \$2,400.00$  as per section 38 of the Act and to be reimbursed for the filing fee of \$100.00. The Tenants said their total claim is \$2500.00.

### Analysis

Section 38 (1) says that 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.

And Section 38 (6) says 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.

I accept the Tenants' testimony that they gave the Landlord a forwarding address in writing on August 1, 2016. The Landlord did not repay security deposit to the Tenants within 15 days of the end of the tenancy or 15 days after receiving the Tenants' forwarding address in writing, nor did the Landlord apply for dispute resolution by August 16, 2016. Consequently I find for the Tenant and grant an order for double the security deposit of \$1,200.00 in the amount of  $\$1,200.00 \times 2 = \$2,400.00$ .

As the Tenants were successful in this matter I also order the Tenants to recover the filing fee of \$100.00 from the Landlord. Consequently, pursuant to section 67 a monetary order for \$2,500.00 has been issued to the Tenants. This Monetary order represents double the security deposit in the amount of \$2,400.00 plus the \$100.00 filing fee.

### Conclusion

I find in favour of the Tenants' monetary claim. Pursuant to sections 38 and 67 of the Act, I grant a Monetary Order for \$2,500.00 to the Tenants. The order must be served on the Respondent and is enforceable through the Provincial Court of British Columbia (small claims court) as an order of that court.

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: April 25, 2017.

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Residential Tenancy Branch