

DECISION

Dispute Codes:

MNSD

Introduction

This is the Tenant's application a monetary order for return of the security deposit paid to the Landlord, together with accrued interest, and to recover the cost of the filing fee from the Landlord..

The Tenant gave affirmed testimony and the Hearing proceeded on its merits.

Issues to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?

Background and Evidence

The Tenant DM gave the following testimony:

- The Tenant served the Landlord with the Notice of Hearing documents on September 22, 2009, by handing the documents to the Landlord's property manager at the Landlord's office.
- On July 31, 2009, at 1:21 p.m., the Tenant provided the Landlord with written notice to end the tenancy, along with the Tenants' forwarding address for return of the security deposit.
- The Tenant moved out of the rental unit on August 31, 2009.
- The Tenant did not agree that the Landlord could retain any of the security deposit. There have been no other Orders given with respect to the security deposit.
- On November 19, 2009, the Tenants received a partial refund of the security deposit in the amount of \$230.00. The Tenants have not cashed the refund cheque.

Analysis

I accept the Tenant DM's testimony with respect to service of the Notice of Hearing documents upon the Landlord. Despite being served with the Notice of Hearing documents, the Landlord did not sign into the telephone conference and the Hearing proceeded in its absence.

A security deposit is held in trust by a landlord, to be applied in accordance with the provisions of Section 38 of the *Residential Tenancy Act* (the "Act").

Section 38(1) of the Act provides that (unless a landlord has the tenant's written consent to retain a portion of the security deposit) after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

The Tenants did not provide a copy of their notice to end the tenancy, including written notification of their forwarding address. However, I find that the Landlord received the Tenants' forwarding address in writing on the day the Landlord's agent was served with the Notice of Hearing documents, September 22, 2009. The Landlord returned a portion of the Tenants' security deposit, but not within the 15 days allowed by the Act. Nor did the Landlord file a counter claim to the Tenants' application, against the security deposit.

Section 38(6) of the Act provides 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 security deposit. Therefore, the Tenant is entitled to a monetary order for double the security deposit, in the amount of \$735.00, plus accrued interest on the original deposit in the amount of \$13.01.

The Tenants have been successful in their application and are entitled to recover the cost of the filing fee from the Landlord.

I hereby provide the Tenants with a Monetary order, calculated as follows:

Double the security deposit

\$735.00

Accrued interest from March 1, 2004	\$13.01
Recovery of the filing fee	<u>\$50.00</u>
Total monetary award	\$798.01

The Tenants have not cashed the Landlord's cheque in the amount of \$230.00, and I order that the Tenants return the cheque to the Landlord forthwith.

Conclusion

I hereby grant the Tenants a Monetary Order against the Landlord in the amount of \$798.01. This Order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

I order that the Tenants return the Landlord's cheque in the amount of \$230.00 to the Landlord forthwith.

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: January 26, 2010.
