

DECISION

Dispute Codes: MNSD and FF

Introduction

This application was brought by the tenants seeking return of their security deposit in double pursuant to section 38(6) of the *Act* on the grounds that the landlord did not return it within 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address. The tenants also seek to recover the filing fee for this proceeding.

Despite having been served with the Notice of Hearing sent by registered mail, the landlord did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her absence.

Issues to be Decided

This application requires a decision on whether the tenants are entitled to a Monetary Order for return of their security deposit, and whether the amount should be doubled.

Background and Evidence

This tenancy began on September 13, 2009 and ended on December 26, 2009 pursuant to the tenants' written notice dated November 30, 2009 as required under section 45 of the Act. Rent was \$800 per month and the landlord holds a security deposit of \$400 paid on or September 12, 2009.

During the hearing, the tenant gave evidence that the landlord had provided them with a cheque for \$300 of the security deposit, withholding \$100 without their consent to cover utilities which were, in fact, included with the rent under the rental agreement.

The tenants initially applied for return of the \$100, but subsequently amended their application to claim double the security deposit when the landlord's \$300 cheque was returned NSF. The tenants submitted into evidence a copy of their letter to the landlord dated December 31, 2009 provide their forwarding address for return of the deposit.

The tenants also submitted proof of service by registered mail of the original application and Notice of Hearing sent on January 2, 2010 and the amended package on January 25, 2010. However, Canada Post tracking service shows that the landlord did not pick up either package. The landlord is deemed have been served under section 90(a) of the *Act*.

Analysis

Section 38(1) of the *Act* provides that a landlord must, within 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address either return the security deposit or make application for dispute resolution to make a claim against it.

Section 38(6) of the *Act* states that if the landlord does not comply with section 38(1), the landlord must pay the tenant double the amount.

In this case, I find that the landlord returned only a portion of the security deposit without the tenants' consent and without having applied for dispute resolution for authorization to claim against the deposit, and that cheque was NSF.

Accordingly, I find that the landlords must now return the security deposit in double in accordance with section 38(6) of the *Act*. I further find that the tenants are entitled to recover the filing fee for this proceeding from the landlords.

In total, I find that the landlord owes the tenant an amount calculated as follows:

To return the security deposit (No interest due)	\$400.00
To double the security deposit	400.00
Filing fee	50.00
TOTAL	\$850.00

Conclusion

In the event the landlord does not make payment within a reasonable time, the tenants' copy of this decision is accompanied by a Monetary Order for \$850.00, enforceable through the Provincial Court of British Columbia, for service on the landlords.

April 13, 2010