



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD

Introduction

This was an application by the tenant for the return of his security deposit including a monetary order for payment of double the amount of the deposit. The hearing was conducted by conference call. The tenant called in and participated in the hearing. The landlord did not call in and did not participate, but I did hear from S.S., a witness for the landlord, who testified that she called into the hearing at the request of the landlord. The landlord was served with the application for dispute resolution and Notice of hearing sent by registered mail on September 21, 2010. The witness said that she spoke to the landlord and expected the landlord to participate in the hearing.

Issue(s) to be Decided

Is the tenant entitled to the return of his security deposit and interest and an award of double the amount of the deposit?

Background and Evidence

The rental unit is a house in Chilliwack. The tenancy commenced on November 1, 2007. The tenant moved in on or about October 31, 2007 which was the day that the former tenant, S.S. moved out. The former tenant is the witness who participated in this hearing at the request of the landlord. There is no written tenancy agreement. Monthly rent was \$1,150.00. The tenant paid the landlord a security deposit of \$575.00 at the commencement of the tenancy.

The tenant gave notice to the landlord that he intended to move out at the end of January, 2009. The tenant moved out a few days early at the request of the landlord in order to accommodate the landlord's new tenants. The tenant testified that the landlord promised to return his security deposit, but never did. After he moved out the tenant received a letter from the landlord's wife, incorrectly dated January 15, 2008 wherein she said: "Your damage deposit of \$550 covered the cleaning and repairs. Please pay the outstanding amount for your hydro bill enclosed."

The tenant said that he paid all the utilities and nothing was due to the landlord. He also testified that there was no condition inspection, either when he moved in or when he moved out.

The tenant submitted a copy of a letter to the landlord dated December 1, 2009 that provided his forwarding address and requested the return of his deposit.

The landlord has not returned the tenant's deposit and has not filed an application for dispute resolution to claim the deposit. There is no evidence that the tenant has Agreed that the landlord may keep the deposit.

The landlord's witness, S.S. testified that the tenant damaged the rental property, but the landlord provided no documentary or photographic evidence and he did not file an application for dispute resolution to claim compensation for damage alleged to have been caused by the tenant.

Analysis and Conclusion

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the

end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

I am satisfied that the tenant provided the landlord with his forwarding address in writing, and I find that the tenants served the landlord with documents notifying the landlord of this application as required by the *Act*.

The tenants' security deposit was not refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act* and the doubling provision of section 38(6) therefore applies. I grant the tenant's application and award him the sum of \$1,160.11. This includes interest on the original deposit amount. No filing fee was paid for this application. I grant the tenant a monetary order against the landlord in the amount of \$1,160.11. This order may be registered in the Small Claims Court and enforced as an order of that Court.

Dated: January 26, 2011.
