



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: MNSD, MNR, FF

Introduction

These applications were brought by both the landlord and the tenant.

By application of July 11, 2008, the tenant seeks recovery of his security deposit and pet damage deposit retained by the landlord at the conclusion of the tenancy and recovery of his filing fee for his proceeding.

By application of July 25, 2008, the landlord seeks to recover loss of rent for July 2008 on the grounds of late notice, and recover his filing fee for this proceeding.

Issue(s) to be Decided

This application requires a decision on whether the parties are entitled to their monetary claims, a decision dependant among other things on whether the tenancy ended in June as per the tenant's notice and departure or on July 31, 2008, the end date stated by the landlord due to the late notice.

Background and Evidence

This tenancy began December 6, 2005. Rent was \$700 per month and the landlord holds a security deposit of \$350 paid on December 6, 2005 and a pet damage deposit of \$150 paid on December 9, 2005.

During the hearing, the parties concurred that the tenant had given notice on June 4, 2008 that he would be vacating the rental unit on June 30, 2008. In fact, the tenant gave up vacant possession on June 20, 2008 and it was the evidence of the tenant that he provided the landlord with a forwarding address at that time.

The tenant filed his application on July 11, 2008 when the deposits had not been returned. The landlord filed his application to retain the deposits against the July rent on July 25, 2008. The landlord had not been able to find a new tenant for July.

Analysis

Section 38(1) of the *Act* states that a landlord must return the security deposit and the pet damage deposit within 15 days of the latter of the end of the tenancy or receiving the tenant's forwarding address.

The landlord expressed the view that, as the tenant had not given notice until June 4, 2008, the tenancy did not end until July 31, 2008 and, therefore, his July 25, 2008 application was well within time. The tenant held that, having given up possession on June 20, 2008 and having given the landlord his forwarding address at that time, the security deposit should have been returned by July 5, 2008.

To deal with the landlord's claim, section 53(1) of the *Act* states that, if a notice to end tenancy given by either the landlord or tenant has a end of tenancy date that does not comply with the requirements of the *Act* (in this case, one full month following the next rent due date), then the notice is automatically corrected to the proper end date.

Therefore, I find that the landlord is entitled to recover the July rent from the tenant.

As to the tenant's claim, Section 44(1)(d) of the *Act* states that a tenancy ends when the tenant vacates or abandons the rental unit.

Therefore, I find that the tenancy ended on June 20, 2008 when the tenant gave up vacant possession of the rental unit and the landlord should have made claim or returned the deposits within 15 days of that date as required by section 38(1) of the *Act*.

Section 38(6) of the *Act* states that, if a landlord does not comply with section 38(1), then the landlord "must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable."

In addition, I note that the pet damage deposit may only be retained against damage caused by the pet and could not be used in a claim against loss of rent.

As this dispute arose from departures from the statutory requirements by both parties, I find that each should remain responsible for his own filing fees.

As to the remainder of the claims, I find that the accounts balance as follows:

Security deposit due to tenant	\$ 350.00
Interest (December 6, 2005 to date)	11.03
Pet damage deposit due to tenant	150.00
Interest (December 9, 2005 to date)	4.72
To double security deposit	350.00
To double pet damage deposit	<u>150.00</u>
Sub total	\$1,015.75
Less amount due to landlord for loss of rent for July 2008	700.00
TOTAL	\$ 315.75

Conclusion

Thus, the tenant's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, in the amount of \$315.75 for service on the landlord.

September 29, 2008
