



Dispute Resolution Services

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

DECISION

Dispute Codes: MNSD, FF

Introduction

This matter dealt with an application by the tenant for a monetary order in relation to the return of a security deposit at the end of a tenancy. The tenant also seeks to recover the filing fee for the cost of this application.

The tenant appeared at the hearing which was held via teleconference, but there was no appearance by the landlord. The tenant has provided evidence by way of a registered mail receipt and a Canada Post tracking document to show that the notice of hearing and application for dispute resolution was sent to the landlord on August 13, 2008. The mailing was unclaimed by the landlord. Pursuant to s. 90 of the *Residential Tenancy Act*, the documents are deemed served 5 days after they were mailed. I find that the landlord has been properly served effective August 18, 2008 and has not attended at the hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary order in relation to the return of security deposit, and if so, in what amount?

Is the tenant entitled to recover the filing fee for the cost of this application?

Background and Evidence

The tenant gave evidence that the tenancy commenced on August 15, 2004 and ended when the tenant vacated the rental unit on May 15, 2008. The tenant gave evidence that

at the commencement of the tenancy, that a security deposit was paid to the landlord in the amount of \$750.00.

The tenant's evidence is that on May 15, 2008 she verbally gave the landlord her forwarding address and that in her presence, the landlord wrote the address down. The tenant also states that on May 26, 2008 she notified the landlord of her forwarding address via email and that on June 6, 2008 she again gave the landlord her forwarding address in writing via registered mail. The tenant prior to the hearing also provided documentary evidence which supports her verbal testimony.

The tenant's evidence submitted also contains a letter dated May 20, 2008 from the landlord advising the tenant that there is damage to the rental unit and that the damage deposit would not be returned.

I quote from s. 38 of the *Residential Tenancy Act*:

Return of security deposit and pet damage deposit

38 (1) *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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].

(6) 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.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [service of documents] or give the deposit personally to the tenant.

Analysis

I find that based upon the evidence before me, that the landlord has failed to comply with s. 38 (1) quoted above, in that they have not returned the security deposit upon receipt of the forwarding address in writing, nor have they applied for dispute resolution. I find that the landlord had the tenant's forwarding address, in writing, no later than May 26, 2008 and thus had 15 days from that date to exercise the options available under the legislation.

The failure of the landlord to comply with s. 38(1) requires that the landlord pursuant to s. 38(6), **must** pay the tenant an amount equal to double the amount of the security deposit.

Conclusion

I find that the landlord must return the security deposit plus interest in the amount of \$773.73 and an additional amount of \$750.00. The landlord must also pay the tenant the filing fee of \$50.00 for the cost of this application.

I make an order for the tenant in the amount of \$1573.73. This order may be filed with and enforced as an order of the Provincial Court of British Columbia.

Dated: October 2, 2008