



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 compensation for damages she says she is entitled to because the Landlords did not return her security deposit within the time limits required by the Act. The Tenant also sought to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Is the Tenant entitled to compensation and if so, how much?

Background and Evidence

This fixed term started on August 1, 2008 and was to expire January 31, 2009, however, it ended on or about October 1, 2008 when the Tenant moved out. The Tenant paid a security deposit of \$475.00 on July 9, 2008.

The Tenant said she gave verbal notice to the building manager in early September, 2008 that she was ending the tenancy and was told at that time that she would not be entitled to the return of her security deposit. The Tenant said the rental unit was re-rented for October 1, 2008 and therefore the Landlords did not lose any rental income.

The Tenant mailed her request for the return of her damage deposit with her forwarding address to the Landlord (a P.O. Box number) on October 7, 2008. She said when she did not hear anything from the Landlords by mid-November, 2008, she contacted the Landlords' agent to get information regarding the owner name so that she could file an application for dispute resolution. The Tenant said on November 27, 2008 she received a cheque for \$475.00 from the Landlords which was dated October 15, 2008. The Tenant said the envelope did not have a date stamp on it. She claimed however, that her forwarding address was a postal box at a mailbox business and that the operator of that business gave his written acknowledgement of the date he received it in the mail.

The Landlords admitted to receiving the Tenant's forwarding address and claimed that a cheque was mailed to the Tenant on October 15, 2008. The Landlord' agent said he

could not account for why the cheque was not delivered to the Tenant until November 27, 2008. The Landlords' bookkeeper gave evidence that she prepares security deposit cheques on the 13th day of each month for the Landlords and post-dates them for the 15th of that month. The bookkeeper claimed that if she received a request to prepare a security deposit refund after the 13th day of the month, it would not be prepared again until the following month. The Landlords' agent claimed that the Tenant's mail would have come to his office but that their bookkeeper worked from another location.

Analysis

Section 38(1) of the Act says that a Landlord has 15 days from the later of the end of the tenancy or the date he receives the Tenant's forwarding address in writing to either return the security deposit or apply for dispute resolution to make a claim against it. If a Landlord does neither of these things and does not have the Tenant's written consent to keep the security deposit, then pursuant to s. 38(6) of the Act, the Landlord must return double the security deposit (plus accrued interest) to the Tenant.

Pursuant to s. 90, the Landlords were deemed to receive the Tenant's forwarding address in writing 5 days after it was mailed or on October 12, 2008 (however due to the statutory long weekend, it would be extended to October 14, 2008). I find on a balance of probabilities that the Landlords did not send the Tenant's security deposit to her on October 15, 2008 as he alleged. In particular, I find on a balance of probabilities that the Landlords' cheque was not mailed to her until she after she put them on notice she would be applying for dispute resolution. I also find on a balance of probabilities that the Landlords' bookkeeper did not have the Tenant's letter requesting her security deposit on October 13, 2008 and that as a result the cheque in question was not prepared until the following month.

I find the Landlords did not return the Tenant's security deposit by October 29, 2008, and as a result the Landlords must pay the Tenant double the amount of her security deposit plus accrued interest. As the Tenant has already received \$475.00 from the Landlords, I find she is entitled to \$475.00 plus accrued interest of \$3.43. I also find the Tenant is entitled to recover her \$50.00 filing fee for this proceeding.

Conclusion

A monetary order in the amount of **\$528.43** has been issued to the Tenant and a copy of it must be served on the Landlords. If the amount is not paid by the Landlords, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.