

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 hearing was convened in response to an application by the tenant for a monetary order for the return of a security deposit and compensation under Section 38 of the Residential Tenancy Act (the Act). Despite having been deemed served by February 05, 2009 in accordance with Section 89 of the Act with the application for dispute resolution and notice of hearing by Registered Mail the landlord did not participate in the conference call hearing, or file for dispute resolution in regards to this matter.

Issue(s) to be Decided

Is the tenant entitled to double the return of the security deposit and other monetary amounts claimed?

Background and Evidence

The undisputed evidence and testimony of the tenant before me is as follows:

- on or about July 01, 2008 the tenant responded to an on-line advertisement for a rental unit available for rent in the amount of \$2200.
- on July 03, 2008 the tenant forwarded to the landlord, by registered / trackable mail, assured funds (bank draft) in the amount of \$1100 in US dollars, as a security deposit, for which the tenant has provided a bank draft receipt in the name of the landlord.
- The tenant arrived into the Province on July 10, 2008 and made arrangements to view the rental unit and attend to a written tenancy agreement.

- The landlord and tenant entered into a written tenancy agreement on July 20, 2008 at which time an issue arose respecting smoking on the global property / Strata property on which the rental unit was situated. Up to that point the communication between the parties had only been in respect to non smoking within the rental unit.
- on July 22, 2008 the tenant contacted the landlord and advised that under the circumstances presented to him he wished to cancel their agreement, as the unresolved smoking issue, “was not going to work” for the tenant. The tenant stated he was willing to compensate the landlord for certain costs, but that he wanted a refund of his funds paid as security deposit.
- On November 17, 2008 the tenant drafted a letter to the landlord again requesting for a refund of the security deposit and providing the tenant's forwarding address. This letter was sent to the landlord via registered mail dated November 17, 2008, which was returned marked 'Refused'. In accordance with Section 88 of the Act, the landlord was deemed to have been served with the letter and as such received the letter by November 23, 2008.
- as of this date the tenant has not received any refund of the security deposit as requested and the landlord has not filed an application for dispute resolution to retain the funds

At the hearing, the tenant gave evidence which corresponded with the dates outlined above and that agreed with the basic facts.

Analysis

The tenant gave funds to secure a rental unit and prior to the agreed move in date the tenant cancelled the agreement and requested a full refund of the security deposit. The undisputed amount which was paid was \$1100.00 USD.

The landlord has not made a claim to attempt to keep any or all of those funds, so their entitlement to retain those funds has not been tested or proven. There are also certain statutory requirements which deal with landlord's obligations in regards to the return of security deposits, which I find that landlord has failed to comply with.

I find that in the absence of a claim by the landlord to retain or keep all or any of the security deposit placed an obligation on the landlord to return the full security deposit as required under s. 38(1) of the *Residential Tenancy Act*, unless he acts within the timelines contained therein.

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.

I find that the landlord was sent a forwarding address for the tenant, deemed received by November 23, 2008, via registered mail. The landlord has yet to return the security deposit, and I therefore find that he has failed to comply with s. 38(1). I find that pursuant to s. 38 (6) that the landlord's failure to comply requires that the landlord **must** pay to the tenant an amount equal to double the security deposit, plus interest on the original amount.

I also find that the tenant is entitled to recover the filing fee of \$50 for the cost of this application.

I find that the tenant has established an entitlement claim as follows:

| | |
|---|----------------------|
| Security Deposit | \$1100.00 USD |
| Interest on Security Deposit | \$ 8.20 USD |
| Amount Equal to Security Deposit | \$1100.00 USD |
| <i>\$2208.20 USD to CAD – effective July 03, 2008 – Bank of Canada @ CAD - 1.0206</i> | <i>CAD \$2253.69</i> |
| Filing Fee | \$50.00 |
| Total | \$2303.69 |

Conclusion

I grant the tenant a monetary order in the amount of **\$2303.69** which is payable forthwith. This order may be filed with and enforced as an order of Provincial Court of British Columbia.

Dated : April 06, 2009