



Dispute Resolution Services

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

Decision

Dispute Codes: MNSD

Introduction

This hearing dealt with an application from the tenant for double return of the security deposit. The tenant participated in the hearing and gave affirmed testimony.

Neither the landlord nor the landlord's agent appeared at the hearing. The tenant indicated that the application for dispute resolution and notice of hearing package had been sent by way of regular mail to the attention of the building manager, "JW."

Issues to be Decided

- Whether the landlord was properly served
- Whether the tenant may be entitled to double return of the security deposit

Background and Evidence

The six (6) month fixed term of tenancy began on September 1, 2008 and was to end on February 28, 2009. Rent in the amount of \$915.00 was payable in advance on the first day of each month, and a security deposit of \$457.00 was collected near the start of tenancy.

At the outset of January, the tenant provided notice of intent to vacate the unit at the end of January 2009, or one month earlier than originally agreed. Thereafter, the landlord was able to re-rent the unit effective February 1, 2009.

The tenant and the building manager completed a move-out condition inspection and report on January 31, 2009, at which time the tenant also provided the particulars of her forwarding address in writing. The inspection of the unit did not result in any money

owing to the landlord by the tenant for costs associated with cleaning or repairs. In the result, the understanding was that the tenant's security deposit would forthwith be refunded in full and forwarded to her new address. Subsequently, the tenant received a cheque dated February 18, 2008 in the amount of \$457.00, with a notation reading "security deposit refund." As the cheque was mistakenly dated February 18, **2008**, the tenant was unable to cash it.

Following this, the landlord issued a new cheque in the amount of \$459.28 (security deposit plus interest) and sent it to the tenant by way of registered mail. Enclosed with the new cheque was a letter from the landlord in which he acknowledged the error with the first cheque and offered an apology "for any inconvenience." However, pursuant to the Act, the tenant seeks double return of her security deposit.

Analysis

The full text of the relevant legislation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and other information pertinent to the landlord – tenant relationship, can be accessed via the website: www.rto.gov.bc.ca/

Residential Tenancy Policy Guideline #12 speaks to Service Provisions and provides (with particular exceptions) that a tenant must serve a landlord with an application for dispute resolution in one of three ways. Specifically, this guideline provides, in part, as follows:

Personal Service

- Where a tenant is personally serving a landlord, the tenant must serve a document by leaving a copy of it with the landlord or an agent of the landlord.

This requires actually handing a copy of the document to the person being served. If the person declines to take a copy of the document, it may be left near the person so long as the person serving informs the person being served of the nature of the document being left near them.

Registered Mail

- Where a tenant is serving a landlord by registered mail, the address for service must be where the landlord resides at the time of mailing or the address at which the landlord carries on business as a landlord.

“Registered Mail” includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available.

An Arbitrator’s Order Regarding Service

- See sections 10 and 11 below for discussion of this subject.

Pursuant to the tenant’s testimony that the application for dispute resolution and notice of hearing package was sent to the landlord / landlord’s agent by way of *regular mail*, I find that it was not properly served. Accordingly, I must dismiss the application, but with leave to reapply. The tenant has the option of reapplying for dispute resolution and ensuring that the package is served in compliance with the above provisions.

Despite the finding, as above, I draw the attention of the parties to section 38 of the Act which speaks to **Return of security deposit and pet damage deposit**. In particular, section 38(1) of the Act states:

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.

Further, section 38(6) of the Act provides:

38(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.

In the circumstances of this dispute, it appears that the tenant paid a security deposit to the landlord on or about September 1, 2008 in the amount of \$457.00. The landlord neither returned the tenant's security deposit within 15 days of having been informed in writing of her forwarding address, nor made an application for dispute resolution claiming against the security deposit. Accordingly, pursuant to section 38(6)(b) of the Act, as above, the tenant may be entitled to double return of her security deposit in the amount of \$914.00 (2 x \$457.00) plus interest on the original amount which is \$2.28 (total: \$916.28). As the tenant has already received payment of \$459.28, the balance owed to her may be found to be \$457.00 (\$916.28 – \$459.28).

By way of the above information, the parties have the option of resolving the dispute between them. In the alternative, and as earlier stated, the tenant has the option of reapplying for dispute resolution and ensuring that the landlord is served with the application for dispute resolution and notice of hearing package in the required manner.

Conclusion

Pursuant to all of the above, I hereby dismiss the application with leave to reapply.

DATE: May 8, 2009

Dispute Resolution Officer