

DECISION

Dispute Codes: MNSD, MNDC and FF

Introduction

This application was brought by the tenant seeking a Monetary Order for return of her security deposit in double on the grounds that it was not returned within 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address. The tenant also sought to recover one week of rent and the filing fee for this proceeding from.

Issue(s) to be Decided

This matter requires a decision on whether the tenant is entitled to Monetary Order for the amounts claimed.

Background and Evidence

This tenancy ran from August 14, 2009 to August 24, 2009. Rent was to be \$975 per month and the landlord held a security deposit of \$487.50.

This matter is somewhat clouded by the fact that neither party appears to have followed the *Act* with respect to the issues in dispute.

The tenant makes claim that she was evicted without due process, while the landlord stated that the parents of the tenant who was 17 years old at the time, had agreed that the tenancy should end when it did. The tenant's mother did not contest the point, but stated that the landlord had agreed to return unused rent at the time as well as the security deposit. The landlord stated that the early end of the tenancy resulted from excessive partying by the tenant, although the tenant claimed to have been falsely accused of disturbances that were not her doing.

At the time of the application, the tenant had not received her security deposit. However, it was returned by cheque of October 16, 2009, issued eight days after receipt of the tenant's forwarding address. The tenant stated that she had provided the forwarding address when she moved in but she had no evidence of having provided the landlord with written notice of her address at the end of the tenancy.

Analysis

Section 38(1) of the *Act* provides that, within 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address, a landlord must return the deposit or make application for dispute resolution to claim against it.

Section 38(6) of the *Act* states that if the landlord does not comply with section 38(1), the landlord may not claim against the deposit and must pay the tenant double the amount of the deposit.

I find that the security deposit was returned within 15 days of the landlord receiving the forwarding address and the tenant's claim for double is dismissed.

As to the claim for return of one week's rent, while the parties are at variance over whether this was part of the agreement, I find that the landlord benefited from the tenant's agreement to end the tenancy without due process, and that return of unused rent would have constituted a logical component of that agreement.

Therefore, I find that the tenant is entitled to return of seven days rent calculated as \$975 divided by 31 days equals a per diem of \$31.45 times seven days = \$220.16.

I find that as this dispute arose from a failure of both parties to adhere to the *Act* and the rental agreement, that the filing fee should be split equally between them.

Thus, I find that the landlord owes the tenant \$220.16 in unpaid rent plus \$25 for half of the filing fee for a total of \$245.16.

Conclusion

The tenant's copy of this decision is accompanied by a Monetary Order for **\$245.16**, enforceable through the Provincial Court of British Columbia, for service on the landlord.

January 29, 2010