

DECISION

Dispute Codes: MNSD, MNDC and FF

Introduction

This application was brought by the tenant on October 15, 2009 seeking a Monetary Order for return of one month's rent as the tenancy ended pursuant to a Notice to End Tenancy for landlord use and the landlord did not provide one-month's free rent as required.

The tenant amended her application on October 23, 2009 seeking a Monetary Order return of her security deposit in double after the landlord did not return or make application to claim upon it with 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address.

The tenant also seeks to recover the filing fee for this proceeding from the tenant.

Despite having been served with the Notice of Hearing sent by registered mail on October 16, 2009, the landlord did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her absence.

Issues to be Decided

This application requires a decision on whether the tenant is entitled to a Monetary Order for return of one-month's rent, return of her security deposit in double and recovery of the filing fee for this proceeding.

Background and Evidence

This tenancy began on November 1, 2008, according to the memory of the tenant, and it ended on October 1, 2009 pursuant to a Notice to End Tenancy for landlord use dated July 27, 2009. Rent was \$800 per month and the landlord holds a security deposit of \$400.

During the hearing, the tenant gave evidence that the Notice to End Tenancy had been served as the landlord needed the basement suite for her son. At the conclusion of the tenancy, the landlord had told her that the rental unit was in good order and that she would be returning the security deposit.

However, the landlord had advised her that she would not return the rent for September 2009.

The tenant stated that she had provided the landlord with her forwarding address in writing on October 7, 2009. She stated that she had returned to the rental unit to pick up the deposit, but the landlord had not come to the door.

Analysis

Section 51(a) of the *Act* provides that: “A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.”

In the absence of evidence to the contrary, I find that the landlord has failed to return the rent for September 2009 as required and that the tenant is entitled to an Order for return of the \$800.

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, the landlord must return the security deposit to the tenant or make application for dispute resolution to claim upon it.

In this matter, I find as fact that the landlord did not make application to claim the deposit within 15 days of receiving the tenant's forwarding address and she has not returned the deposit.

Section 38(6) of the *Act* states that a landlord who does not comply with section 38(1), “must pay the tenant double the amount of the security deposit...”

Therefore, I find that the tenant is entitled to recover the \$400 deposit in double with interest payable on the base amount.

As the application has succeeded on its merits, I find that the tenant should recover the filing fee for this proceeding from the landlord.

Thus, I find that the landlord owes to the tenant an amount calculated as follows:

To return rent for September 2009 as required by S. 51(1)	\$ 800.00
To return the tenant's security deposit	400.00
Interest on security deposit (November 1, 2008 to date)	1.00
To double security deposit as required by S. 38(6)	400.00
Filing fee	50.00
TOTAL	\$1,651.00

Conclusion

The tenant's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$1,651.00 for service on the landlord.

February 9, 2010