

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution for return of her security deposit.

The hearing was conducted via teleconference and was attended by the landlord, the tenant and her witness.

This hearing was originally scheduled for January 21, 2010 but was adjourned due to the unavailability, for medical reasons, of the tenant's witness.

Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for all or part of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began on October 2, 2002 as a month to month tenancy with a monthly rent at the end of the tenancy of \$881.45. The tenant paid a security deposit on October 1, 2002. The tenancy ended on September 2, 2009.

The tenant submitted into evidence the following documents:

- A summary of events of the dispute;
- A copy of a letter dated September 5, 2009 providing the landlord with her forwarding address;
- A copy of a Notice of Rent Increase dated May 11, 2008 providing confirmation of the rent effective September 1, 2008 of \$881.45;
- A copy of a receipt made out to the tenant in the amount of \$776.40 dated October 1, 2002; and
- A copy of a check book entry dated September 16, 2002 showing security deposit and rent of \$1,200.00.

The landlord submitted a letter from Vancouver Eviction Services dated March 19, 2009 requesting proof of amount owing and a copy of the bills.

In the hearing the tenant testified that she met with the landlord on the day the tenancy ended and that he did not complete a move out inspection and stated he had 15 days to return her security deposit. The landlord also stated he spoke with the tenant's brother

and stated he was claiming \$70.00 from the security deposit for keys and broken garage door opener.

The landlord provided no explanation as to why he did not complete a move out inspection with the tenant or provide her with the security deposit on that date. The landlord did not file a claim against the security deposit.

The tenant stated that she provided the forwarding address by having her friend take her to the landlord's home on September 5, 2009 and he knocked on the door several times but there was no answer. They then put the letter in the landlord's mailbox.

The tenant's witness confirms that he assisted the tenant with delivering the forwarding address. The landlord contends that he never received the forwarding address until he received the notice of hearing for this dispute. The landlord stated that he did not submit an Application for Dispute Resolution to claim against the security deposit because he didn't know he had to.

Analysis

Section 38 of the *Act* states a landlord must within 15 days of the end of the tenancy and receipt of the tenant's forwarding address either return the security deposit and interest held, less any mutually agreed upon amounts, or file an Application for Dispute Resolution to claim against the security deposit.

Section 38 goes on to say that if the landlord fails to comply with the return of the security deposit or to file an application he must provide the tenant with double the amount of the security deposit.

Section 88 of the *Act* describes the methods of the service of documents between parties to a tenancy agreement. The section allows a party to leave a copy in a mail box or slot for the address at which the person resides. Section 90 stipulates that a document served in this manner is deemed received on the 3rd day after it is left.

As the tenant has provided a witness to confirm the service, I find the landlord was properly provided with the tenant's forwarding address on September 5, 2009 and it is deemed received on September 8, 2009. This would require the landlord to return the security deposit or file an Application for Dispute Resolution no later than September 23, 2009.

Conclusion

I find that the tenant is entitled to monetary compensation pursuant to Section 67 and I therefore grant a monetary order in the amount of **\$930.10** comprised of \$880.10 security deposit and interest held and the \$50.00 fee paid by the landlord for this application.

This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 08, 2010.

Dispute Resolution Officer