DECISION

Dispute Codes: MNR, MNDC, MNSD and FF

Introduction

These applications were brought by the landlord and the estate tenant who was deceased on September 27, 2009.

By application of February 1, 2010, the landlord seeks a Monetary Order for unpaid rent for September 2009, and for loss of rent for October 2009, recovery of his filing fee for tis proceeding and authorization to retain the security deposit in set off against the balance owed.

By prior application of November 6, 2009, the estate of the tenant seeks return of the security deposit in double on the grounds that the landlord failed to return it or file for dispute resolution to make claim on it within 15 days of the end of the tenancy or receipt of a forwarding address. The tenant's estate also seeks recovery of the filing fee for this proceeding.

Issues to be Decided

The landlord's application requires a decision on whether the landlord is entitled to a Monetary Order for the unpaid rent and loss of rent, filing fee and authorization to retain the security deposit.

The tenants application requires a decision on whether the security deposit should be returned in double and whether the filing fee should be included.

Background and Evidence

This tenancy began on August 7, 2009 and ended on September 27, 2009 when the tenant passed on. Rent was $750 per month and the landlord holds a security deposit of $375.

During the hearing, the landlord gave evidence that the tenant's rent for September 2009 had not been paid. The tenant's representative had no contradictory evidence. The landlord stated that, because the tenancy had ended so late in the month, he was unable to find a new tenant for October.

The tenant's representative stated that she had participated in the assisting the tenant o move in and in the cleaning of the rental unit on his passing, and that the building manager had been satisfied with the condition of the rental unit.

Analysis

As to the landlord's application, Residential Tenancy Policy Guideline 19 instructs that:

"Where a tenant or lessee dies, the executor or administrator of the estate becomes the assignee of the tenancy in law and, as such, is responsible for any rights or obligations under the original tenancy as a representative of the original tenant."

Therefore, I find that the landlord is entitled to a Monetary Order for the unpaid rent for September and the loss of rent for October 2009.

However, as the landlord did not make application within 15 days if the end of the tenancy or receipt of a forwarding address for the family of the tenant as required by section 38(1) of the *Act,* he may not make claim on the security deposit.

As to the application by the tenant's representative, section 38(6) of the *Act* states that, if the landlord does not comply with section 38(1), then the landlord must return the security deposit in double. Accordingly, I find that the landlord owes the tenant's estate double the amount of the security deposit.

Having found merit in both applications, I find that each of the parties should remain responsible for their own filing fee.

Thus, I find that account balance as follows:

Amount owed to landlord		
Rent for September 2009	$ 750.00	
Loss of rent for October 2009	750.00	
Sub total	$1500.00	$1500.00
Amount owed to tenant's estate		
To return security deposit (no interest due)	$375.00	
To double security deposit under section 38(6) of the Act	375.00	
Sub total	$750.00	- 750.00
TOTAL balance owed to landlord		$750.00

Conclusion

The landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for $750.00, for service on the tenant's estate.

March 8, 2010