

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Tenant for the return of his security deposit, for compensation equivalent to the amount of the security deposit for the Landlords' failure to return the deposit as required by the Act and to recover the filing fee for this proceeding.

At the beginning of the hearing, the Landlords' agent confirmed that the surname of one of the Landlords was spelled incorrectly and as a result, the style of cause is amended to reflect the property spelling.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of his security deposit and if so, how much?

Background and Evidence

This tenancy started on June 1, 2008 and ended on May 1, 2009. Rent was \$1,500.00 per month. The Tenant paid a security deposit of \$750.00 at the beginning of the tenancy.

The Tenant said he delivered his forwarding address in writing to the Landlords' business premises on November 5, 2009 however they have not returned his security deposit. The Tenant said he did not give the Landlords written authorization to keep his security deposit. The Tenant also claimed that the Landlords did not do a move in or a move out condition inspection report as required by the Act.

The Landlords did not dispute any of these matters but argued firstly that they were not properly named as Landlords. In particular, the Landlords claim that the non-corporate Landlord should not have been named as a Party in these proceedings but admitted that he was authorized to act an agent for and exercise powers on behalf of the corporate Landlord during the tenancy and at a dispute resolution hearing involving the Tenant which was held on March 5, 2009. The Landlords also argued that they are not properly named as Parties in these proceedings because they ceased to act on behalf of the owner of the rental property once the tenancy ended.

The Landlords further argued that the Tenant is responsible for a number of Strata fines incurred during the tenancy which have not been paid.

Analysis

Section 1 of the Act defines a Landlord (in part) as “the owner of a rental unit, the owner’s agent or another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under the Act or tenancy agreement.” Given the evidence of the Landlords’ agent that the individual Landlord was authorized to act on behalf of the corporate Landlord who in turn was authorized to act on behalf of the owner of the rental property during the tenancy and did in fact act in that capacity, I find that the individual Landlord is properly named as a party in these proceedings. Furthermore, the definition of a Landlord under s. 1 of the Act also includes “a former landlord.” Consequently, I find that both of the Landlords are properly named in these proceedings.

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he receives the Tenant’s forwarding address in writing (whichever is later) to either return the Tenant’s security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant’s written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit to the Tenant.

I find that the Landlords received the Tenant’s forwarding address in writing on November 5, 2009 but did not return his security deposit. Although the Landlords filed an application claiming the security deposit (which was part of the hearing on March 5, 2009), no order was made permitting the Landlords to keep the deposit. Consequently, I find that the Landlords were required ***no later than November 20, 2009*** to either make another application for dispute resolution to make a claim against the deposit or to return it to the Tenant. I find that the Landlords did not do either of these things and did not have the Tenant’s written authorization to keep the security deposit.

As a result, I find that pursuant to s. 38(6) of the Act, the Landlords must return double the amount of the security deposit (\$1,500.00) to the Tenant with accrued interest of \$6.58 (on the original amount). As the Tenant has been successful in this matter, I also find that he is entitled to recover the \$50.00 filing fee for this proceeding.

Conclusion

A monetary order in the amount of **\$1,556.58** has been issued to the Tenant and a copy of it must be served on the Landlords. If the amount is not paid by the Landlords, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: April 22, 2010.

Dispute Resolution Officer