

DECISION

Dispute Codes MNSD, (MNDC), FF

Introduction

This matter dealt with an application by the Tenant for the return of her security deposit, for compensation equivalent to the amount of the security deposit due to the Landlord's failure to return the deposit within the time limits required under the Act and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail to her residence on February 3, 2010. The Tenant said the hearing package was returned to her unclaimed. Section 90 of the Act states that a document delivered by registered mail is deemed to be received by the recipient 5 days later even if the recipient refuses to pick up the mail. Based on the evidence of the Tenant, I find that the Landlord was served with the hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord's absence.

Issues(s) to be Decided

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

Background and Evidence

The rental unit is one of two mobile homes located on the residential property. During the tenancy, the other mobile home was occupied by the Landlord. The Tenant said the tenancy started on January 12, 2007 and ended on May 1, 2009 when she moved out. Rent was \$1,034.00 per month. The Tenant paid a security deposit of \$500.00 at the beginning of the tenancy.

The Tenant said she sent the Landlord a written request for the security deposit with her forwarding address by registered mail on October 13, 2009. The Tenant provided a copy of that letter as evidence at the hearing which shows a handwritten alteration to the forwarding address. The Tenant said the copy of the letter sent to the Landlord also had the handwritten alteration. The Tenant said that mail was not returned to her unclaimed. The Tenant also said the Landlord has not returned her security deposit and she did not give the Landlord written authorization to keep the security deposit.

Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date she 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.

Pursuant to s. 90 of the Act, the Landlord is deemed to have received the Tenant's forwarding address in writing on October 18, 2009. I find that the Landlord received the Tenant's forwarding address but did not return her security deposit and did not make an application for dispute resolution to make a claim against the deposit. I also find that the Landlord 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 Landlord must return double the amount of the security deposit (\$1,000.00) to the Tenant with accrued interest of \$14.88 (on the original amount).

As the Tenant has been successful in this matter, I also find pursuant to s. 72 of the Act that she is entitled to recover from the Landlord the \$50.00 filing fee for this proceeding.

Conclusion

A monetary order in the amount of **\$1,064.88** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, 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: May 19, 2010.

Dispute Resolution Officer