

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 for the loss of personal property and to recover the filing fee for this proceeding.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on February 1, 2010. According to the Canada Post online tracking system, the recipient attempted to return the hearing package to the sender on February 2, 2010 and on February 19, 2010 it was returned to the Tenant as the item was again refused by the recipient. Section 90 of the Act says that a document served by mail is deemed to be received by the recipient 5 days later whether the recipient refuses to accept the mail or not. Based on the evidence of the Tenant, I find that the Landlord was served 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 his security deposit and if so, how much?
2. Is the Tenant entitled to compensation for the loss of personal property and if so, how much?

Background and Evidence

This month to month tenancy started on May 27, 2008 and ended on March 27, 2009 when the Tenant moved out. The Tenant paid a security deposit of \$250.00 at the beginning of the tenancy.

The Tenant said he gave the Landlord his mailing address at the beginning of the tenancy and that it did not change when he moved out. The Tenant said the Landlord has failed or refused to return his security deposit and he has not given the Landlord written authorization to keep it.

The Tenant also said that during the tenancy, the Landlord or one of his agents told him that he had to move his barbeque to another floor for safety reasons. The Tenant claimed that one of the Landlord's sons told him that while he was out of town for a period of 10 days during the tenancy, the Landlord's agent threw out the Tenant's barbeque because he believed it was abandoned. The Tenant said the barbeque was only 6 months old and in almost new condition. The Tenant also said it would cost him \$85.00 to replace the barbeque.

Analysis

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.

I find that there is insufficient evidence that the Tenant gave the Landlord a forwarding address to where the security deposit could be sent once the tenancy ended as required by s. 38(1) of the Act. However, I also find that had the Landlord not refused service of the Tenant's hearing package, he would have had the Tenant's forwarding address. Consequently, I order the Landlord pursuant to s. 38(1) of the Act to return the Tenant's security deposit and accrued interest of \$252.24 to him at the address for the Tenant which appears on the cover page of this Decision.

Sections 24 and 25 of the Regulations to the Act sets out the circumstances under which a Landlord may consider property belonging to a Tenant to have been abandoned and when a Landlord may dispose of that personal property. In the absence of any contradictory evidence from the Landlord, I find that the Tenant's barbeque was not abandoned property and that the Landlord had no authority under the Act to dispose of it. Consequently, I find that the Tenant is entitled to compensation for the value of the barbeque. However, the Tenant provided little evidence of value and in the circumstances I award him \$50.00 for the loss of that property.

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

Conclusion

A Monetary Order in the amount of **\$352.24** 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 25, 2010.

Dispute Resolution Officer