DECISION

Dispute Codes MNSD, (MNDC), FF

Introduction

This matter dealt with an application by the Tenant for the return of his security deposit and pet damage deposit plus compensation equivalent to those amounts due to the Landlord's failure to return the deposits within the time limits required under the Act. The tenant also applied to recover an overpayment of utilities and the filing fee for this proceeding.

The Tenant said he asked the Landlord many times for his address but the Landlord would not give it to him. The Tenant said another tenant of the rental property advised him of the address to which the Landlord told her to send her rent cheques and as a result, he sent a copy of his application and notice of hearing ("hearing package") to that address by registered mail on February 5, 2010. The Tenant said the Landlord did not pick up the hearing package and it was returned to him on March 2, 2010. The Tenant said he sent a number of text messages to the Landlord asking for his address but the Landlord would not provide it. The Tenant said he also advised the Landlord in a text message on March 3, 2010 of the date of the Dispute Resolution Hearing.

The Tenant said he sent a second copy of the hearing package to the Landlord at the rental unit address on March 9, 2010 by registered mail and sent the Landlord a text message 3 days later advising him that he had done so. That mail was also returned to the Tenant unclaimed. The Tenant said he contacted the Landlord's workplace on April 4, 2010 and confirmed that he was still working there. As a result, on April 6, 2010, the Tenant sent a third hearing package to the Landlord at his place of work by registered mail which was accepted on April 7, 2010.

Section 89 of the Act requires that an application for a monetary order must be served on a Landlord in person, by registered mail to the address where the person resides or where the person carries on business as a landlord *or as ordered by the director under s. 71 of the Act.* I find that the Tenant has made reasonable attempts to serve the Landlord as required by s. 89 of the Act but that the Landlord has tried to evade service by refusing to provide the Tenant with an address for service which he is required to do under s. 13 of the Act. In the circumstances, I find that the Landlord has been sufficiently served with the Tenant's hearing package for the purposes 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 pet damage deposit and if so, how much?

2. Is the Tenant entitled to recover an overpayment of utilities?

Background and Evidence

This tenancy started on October 1, 2007 and ended on December 12, 2009 when the Tenant moved out. The Tenant paid a security deposit of $450.00 and a pet damage deposit of $450.00 at the beginning of the tenancy.

The Tenant said he contacted the Landlord a number of times about meeting to do a move out condition inspection of the rental unit but the Landlord never showed up to do one. Consequently, the Tenant said at the end of the tenancy, he left the keys and a note with his forwarding address on the counter of the rental unit. The Tenant said he also sent the Landlord a text message in mid-January 2010 with his forwarding address and provided a copy of that message as evidence at the hearing. The Tenant said the Landlord has not returned his pet damage deposit or security deposit and that he did not give the Landlord written authorization to keep them.

The Tenant also claimed that at the beginning of the tenancy the Landlord asked him to put the utilities for the rental property in his name and that the Landlord would reimburse him 50% representing the share of the other tenants in the rental property. The Tenant said he was required to pay a deposit of $290.00 on the gas bill at the beginning of the tenancy and that it (plus interest of $8.07) was applied to the January 2009 bill. Consequently, the Tenant said he overpaid this bill for which he was never reimbursed.

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 and pet damage deposit or to make an application for dispute resolution to make a claim against them. 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 or pet damage deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit and pet damage deposit.

Section 36(2) of the Act says that if a Landlord does not complete a move out condition inspection report, the Landlord's right to make a claim against the security deposit for damages to the rental unit is extinguished. In other words, the Landlord may still bring an application for compensation for damages however he may not offset those damages from the security deposit.

I find that the Tenant gave the Landlord his forwarding address in writing on December 12, 2009 and again on or about January 15, 2010. I also find that the Landlord did not return the Tenant's security deposit or pet damage deposit and did not make an

application for dispute resolution to make a claim against the deposits. I further find that the Landlord did not have the Tenant's written authorization to keep the security deposit or pet damage deposit and that his right to make a claim against them for compensation for any damages to the rental unit was extinguished under s. 36(2) of the Act because he did not complete a move out condition inspection report. 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 ($900.00) and double the amount of the pet damage deposit ($900.00) to the Tenant with accrued interest of $16.95 (on the original amount).

RTB Policy Guideline #1 at p. 9 states as follows:

> A term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable as defined in the Regulations.
>
> If the tenancy agreement requires one of the tenants to have utilities in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the landlord for the other tenants' share of the unpaid utility bills."

I find that the Tenant was required by the Landlord as a term of their tenancy agreement to pay for utilities for premises that the Tenant did not occupy. I further find that the Tenant has not been reimbursed for one-half of his deposit which was applied to the January 2009 billing (less a credit to the Tenant of ($48.61) and therefore he is entitled to recover from the Landlord the amount of $100.42. 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 **$1,967.37** 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 11, 2010.

Dispute Resolution Officer