

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking the return of double the security deposit under section 38 of the Act and the return of the filing fee for the Application.

An Advocate for the Tenant appeared, gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord was served with the Notice of Hearing and the Application, by personal service on an Agent for the Landlord on March 22, 2010. Despite this, no one appeared for the Landlord at the hearing. I find that the Landlord was served in accordance with the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision. I note the Landlord did not submit any evidence.

Issues(s) to be Decided

Is the Tenant entitled to the return of double the security deposit under section 38 of the Act?

Background and Evidence

The Tenant, through his Agent, and the Landlord entered into a written tenancy agreement for the rental unit. The Tenant was renting the unit to stay in, with several other people, during the Winter Olympic Games. The Tenant paid the Landlord a deposit of \$5,000.00, on February 22, 2010. The written agreement contains terms and conditions consistent with a tenancy agreement, including a clause that the agreement is governed by the laws of British Columbia. It also contains a clause that the deposit shall be returned to the Tenant within 15 days of the end of the tenancy, provided some conditions were met. The Act precludes the Landlord from contracting out of the Act in this regard, even so, there was no evidence these conditions were not met.

The Tenant vacated the premises on February 26, 2010, and paid the Landlord the entire amount of rent due under the rental agreement, \$18,500.00. The Tenant and his Agent provided the Landlord with a written notice of the forwarding address to return the security deposit to on March 3, 2010.

According to the testimony of the Agent for the Tenant, the Landlord returned \$4,828 to the Tenant on or about March 23, 2010. Neither the Tenant, nor his Agent, signed over a portion of the security deposit to the Landlord. The Landlord did not perform incoming or outgoing condition inspection reports.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the Landlord has breached the Tenancy Agreement and Act, and the Tenant is entitled to return of double the security deposit, less the amount refunded, plus the filing fee for the Application.

I find that although this was a short tenancy, the terms and conditions of the rental agreement are clear that this was considered by the parties to be a tenancy agreement, not a vacation rental, and therefore subject to the Act.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit.

There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit.

Conclusion

The Landlord has breached section 38 of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies.

The security deposit is held in trust for the Tenant by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the Act. Here the Landlord did not have authority under the Act to keep any portion of the security deposit nor did the Landlord make an Application for Dispute Resolution to keep a portion.

I find that the Landlord is not entitled to retain any portion of the security deposit.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$5,272.00**, comprised of double the security deposit ($2 \times \$5,000.00 = \$10,000.00$), and the \$100.00 fee for filing this Application, **less** the \$4,828.00 returned to the Tenant.

The Tenant is given a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court 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: July 05, 2010.

Dispute Resolution Officer