

DECISION

Dispute Codes: MNSD, MNDC and FF

Introduction

This application was brought by the tenant seeking a Monetary Order for return of his security and key fob deposit after the landlord did not return it or make application to claim upon it with 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address. The tenant also seeks return of a claimed rent over payment and to recover the filing fee for this proceeding from the landlord.

Issues to be Decided

This application requires a decision on whether the tenant is entitled to a Monetary Order for return his security deposit, whether the amount should be doubled, and whether he is entitled to a return of rent.

Background and Evidence

This tenancy began on October 1, 2008 under a 12 month fixed term rental agreement. Rent was set at \$2,800 per month and the landlord holds a security deposit of \$1,400 paid on September 8, 2008.

The parties amended the agreement on June 29, 2009, reducing the rent to \$2,000 per month and extending the fixed term to December 31, 2009 with an option to renew.

The tenant gave notice on November 29, 2009 that they would be vacating the rental unit on January 31, 2010, actually vacated on January 27, 2010 and after several attempts to contact the landlord, returned the keys three days later.

The tenant gave evidence that when the parties conducted the move-out inspection, the landlord agreed to return the security deposit. However, the landlord wrote to the tenant on February 18, 2010 and advised that he would not return the security deposit due to some noted deficiencies.

The tenant had earlier provided his forwarding address by email and submitted a copy of a letter to the landlord dated February 27, 2010 restating the forwarding address and requesting repayment of the security deposit and an overpayment of rent.

The tenant stated that the landlord had charged \$2,800, a return to the rate set by their original agreement, for rent for the month of January 2010. The tenant claims this was an overpayment. He stated that he and the landlord had an unwritten agreement that he would vacate the rental unit in time for the landlord to make the unit available for visitors to the Olympics.

The landlord relies on the amended agreement of June 29, 2009 which stated that the tenancy ended on December 31, 2009 and that the tenancy in January was under a new (unwritten) agreement and that the \$800 claimed did not constitute a rent increase.

Analysis

On the question of return of \$800 of the rent for January 2010, in the absence of written evidence to the contrary, I find as fact that the original tenancy ended on December 31, 2009 under the amended tenancy agreement. Therefore, I must conclude that the January 2010 portion of the tenancy was under a new agreement and by the tenant is not entitled to claim an over payment based on the previous agreement.

As to the tenant's claim for the security deposit, Section 38(1) of the *Act* provides that, within 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address, the landlord must return the security deposit to the tenant or make application for dispute resolution to claim upon it.

In this matter, I find as fact that the landlord did not make application to claim the deposit within 15 days of the end of the tenancy and that he had the tenants' forwarding address.

Section 38(6) of the *Act* states that a landlord who does not comply with section 38(1), "must pay the tenant double the amount of the security deposit..." Therefore, I find that the tenant is entitled to return of the security deposit in double plus interest on the bare deposit.

As the application has succeeded on its merits, I find that the tenant should recover their filing fee for this proceeding from the landlord.

Thus, I find that the landlord owes to the tenant an amount calculated as follows:

To return the tenants' security deposit	\$1,400.00
Interest (September 8, 2008 to date)	6.60

To double security deposit as required by S. 38(6)	1,400.00
Filing fee	50.00
TOTAL	\$2,856.60

Conclusion

The tenant's copy of this decision is accompanied by a Monetary Order for **\$2,856.60**, enforceable through the Provincial Court of British Columbia, for service on the landlord.

July 28, 2010