

DECISION

Dispute Codes: MNSD, MNDC and FF

Introduction

This application was brought by the tenant seeking a Monetary Order for return of a portion of her security deposit to which she did not consent to retention by the landlord on the grounds that he did not return it within 15 days of the latter of the end of the tenancy or receipt of her forwarding address.

The tenant also seeks the return of rent paid for the month following the month in which she left the rental unit.

Issues to be Decided

This application requires a decision on whether the tenant is entitled to a Monetary Order for one month's rent and return of the contested portion of her security deposit.

Background and Evidence

This tenancy began on September 1, 2008 under a fixed term agreement that the parties concur was extended to May 30, 2010. Rent was \$2,300 per month and the landlord held a security deposit of \$1,150 paid on or about September 1, 2008.

During the hearing, the tenant stated that she had advised the landlord verbally on February 12, 2010 that she had purchased a new home and would be vacating the

rental unit on March 31, 2010, although the landlord questioned the clarity of the notice. The tenant stated that she had not provided notice in writing.

The parties concurred that the tenant had agreed that the landlord could retain \$330 of the security deposit. The tenant gave evidence that she had given the landlord her forwarding address on March 31, 2010 by way of providing him with an envelope with the address printed on it for return of the deposit. The landlord did not recall that event.

The tenant submitted that the landlord was not entitled to have cashed the cheque for the April 2010 rent because he listed the property for sale on March 9, 2010. As a matter of note, the tenant and landlord had previously discussed the possibility of the tenant purchasing the rental unit and the tenant was aware the landlord was considering a sale at the end of the fixed term agreement.

Analysis

As to 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, unless the expressly agrees otherwise, 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 I accept the evidence of the tenant that the forwarding address had been proved to him in writing by March 31, 2010.

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 double the contested portion of the security deposit: $(\$1,150 - \$330 = \$820) \times 2 = \$1,640$.

As to the tenant's claim for return of the April rent, section 45 of the Act which deals with a tenant's notice to end a tenancy provides that it must be given for an effective date that "is not earlier than the date specified in the tenancy agreement as the end of the tenancy."

Furthermore, section 45 requires that tenant notice conform with section 52 of the *Act* which stipulates, among other things, that the notice must be in writing.

In addition, the rental agreement reiterates at clause 3.0 that, if the tenant terminates the agreement early, the tenant remains responsible for subsequent rent until the landlord is able to enter into a new written agreement with a suitable tenant.

Therefore, I must find that the tenant breached the rental agreement, fixed to May 30, 2010, by leaving the tenancy on March 31, 2010 and by failing to give notice in writing.

The tenant proposed that, by listing the property for sale on March 9, 2010, the landlord vastly diminished the possibility of new tenants and should forfeit the right to unpaid rent. I find that it was by the tenant's breach of notice requirements that the landlord was put in a position of having to prematurely test the marketability of the property.

Therefore, I find that the April 2010 rent was lawfully and properly paid and the tenant is not entitled to its return.

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

To return the contested portion of security deposit	\$ 820.00
Interest on the whole deposit of \$1,150 from Sept. 1, 2008 to date	5.75
To double the contested portion of the security deposit	<u>820.00</u>
TOTAL	\$1,645.75

Conclusion

The tenant's copy of this decision is accompanied by a Monetary Order for **\$1,645.75** enforceable through the Provincial Court of British Columbia, for service on the landlord.

August 13, 2010
