



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes REV, MNSD

Introduction

This review hearing was convened by way of conference call to deal with the tenant's application for an order that the landlord return the security deposit to the tenant. A hearing was conducted on April 27, 2010 in the absence of the landlord. The landlord was successful in his application for a review hearing.

At the review hearing on September 7, 2010 both parties attended, gave affirmed evidence and were given the opportunity to cross examine each other on their evidence.

Issues(s) to be Decided

Is the tenant entitled to the return of all or part of the security deposit?

Background and Evidence

This fixed term tenancy began on June 1, 2009 and was to expire on May 31, 2010. Rent in the amount of \$1,400.00 was payable in advance on the 1st day of each month. The landlord collected a security deposit in the amount of \$700.00 prior to the commencement of the tenancy.

The landlord testified that the tenant's girlfriend, also a tenant, called the landlord on December 26, 2009 stating that she was the only tenant remaining in the rental unit, her boyfriend (the applicant herein) and another room mate had moved out. He further testified that the 3 tenants all signed the tenancy agreement, and each person had paid \$233.33 in cash towards that security deposit, and he had issued one receipt with all 3

names on it. He stated that the applicant herein had work in the Yukon and the other tenant was moving at the end of December, 2009. The applicant's girlfriend was concerned that she could only pay her share of the rent and advised the landlord that she was prepared to move out at the end of the month.

The tenants had all vacated the unit by January 1, 2010. An initial walk-through was completed on December 28, 2009 and when the landlord returned to the unit on January 1, 2010, he described the unit as a disaster, although the landlord has not made an application for dispute resolution for damages. He stated that no move-in condition inspection had been completed, and that he never received a forwarding address from the tenants. The rental unit was re-rented on January 20, 2010.

The tenant testified that he had paid 2/3 of the security deposit, and was entitled to the return of all of the security deposit because the tenant that had originally paid the other third, owed this tenant money and it had been agreed that he would recover that debt by recovering all of the security deposit. He further testified that he called the landlord who told him to send mail for him to that rental unit, and there was always a stack of mail for him to pick up when he collected the rent from the tenants at the rental unit. He also stated that he called the landlord on January 24 or 25, 2010 and mailed a note to him on January 27, 2010 with his forwarding address on the note. A copy of that note was provided in advance of the hearing. He further testified that the landlord had told him to send his forwarding address to the rental unit address.

The landlord denied having received any mail other than occasional mail and junk mail at the rental unit. He also stated that he changed his phone number on January 3, 2010, and the tenant did not have that new phone number, having moved out several days prior.

The tenant provided proof of mailing the note to the landlord by registered mail on January 27, 2010, and evidence that it was returned to the sender marked "unknown" and "unclaimed." The landlord also testified that my previous Decision was given to him

by the new tenants on June 1, 2010. That Decision was rendered on May 3, 2010 and the landlord filed for a Review of that Decision on June 2, 2010.

Analysis

It's clear in the evidence before me that the registered mail sent to the landlord by the tenant was in fact sent to the address of the rental unit, and was the same address that the Decision was sent to, and on both occasions the mail was addressed to the landlord. It is also clear that the landlord did not receive that registered mail as evidenced by the returned item by the post office, although he did receive the Decision. I also note that the Notice of Review Hearing was also addressed to the landlord at the rental address.

Section 38 of the *Residential Tenancy Act* states as follows:

- 38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
- (a) the date the tenancy ends, and
 - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

However, I find that under Section 24 (2) of the *Act*, the right of the landlord to claim against that security deposit is extinguished due to the landlord's failure to complete a move-in condition inspection report:

- 24** (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
- (a) does not comply with section 23 (3) [*2 opportunities for inspection*],
 - (b) having complied with section 23 (3), does not participate on either occasion, or

- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Having found that the landlord's right to claim against the security deposit is extinguished, the tenant is entitled to recovery of same. The question that remains before me is whether or not the tenant is entitled to double the amount of the security deposit.

Section 38 of the *Act* goes on to say that:

- (6) If a landlord does not comply with subsection (1), the landlord
 - (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The June 18, 2010 order made by the Dispute Resolution Officer once the landlord had applied for the review specifically requires the tenant to serve on the landlord a copy of the application and any evidence no later than 10 days before this review hearing. I have no evidence before me when the tenant did so, however the application filed by the tenant contains the forwarding address. I find that the tenant did provide his forwarding address but the tenant has failed to establish when he did so and that the landlord failed to return the security deposit within the 15 days provided for in the *Act*.

I find that the tenant is entitled to return of the security deposit currently held in trust by the landlord in the amount of \$700.00. The tenant is also entitled to recovery of the \$50.00 filing fee.

Conclusion

I hereby order that the landlord pay to the tenant the sum of \$750.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division for enforcement 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: September 08, 2010.

Dispute Resolution Officer