

DECISION

Dispute Codes: MNSD and FF

Introduction

This application was brought by the tenant seeking return of her security and pet damage deposits in double on the grounds that the landlord did not return them or make application to claim them within 15 days of the latter of the end the tenancy or receipt of the tenant's forwarding address. The tenant also seeks to recover the filing fee for this proceeding from the landlords.

Issues to be Decided

This application requires a decision on whether the tenant is entitled to a Monetary Order for return of her security and pet damage deposits and whether the amount should be doubled, and recovery of the filing for this proceeding.

Background and Evidence

This tenancy began on July 15, 2009 under a fixed term rental agreement set to end on June 30, 2010. Rent was \$1,300 per month and the landlord holds security and pet damage deposits of \$650 each paid on July, 20, 2009.

During the hearing, the tenant gave evidence that she had submitted a one month notice to end tenancy to the landlord's agent on February 28, 2010 to take effect on March 31, 2010.

The tenant's submitted a copy of the rental agreement with the notation on the first page that a "\$100 cancellation fee will be applied if there is one." They concurred that it had not been paid and gave consent that it could be deducted from the security deposit.

The landlord's representative stated that he did not see that notation on his copy, but as he had not submitted that into evidence, I accept the tenant's submission as true.

Unbeknownst to the tenants at the time, the landlord had sold the rental unit. According to a Revised Seller Statement of Adjustments given to the tenant by the former landlord, possession date was March 11, 2010 although the landlord's representative stated possession was March 19, 2010. The tenant stated that the former landlord had provided the document when the tenant approached him for return of the deposits and referred her to the new landlord.

However, the document did not have an address for the new landlord but the tenant was given a telephone number. The tenant's husband gave evidence that he tried repeatedly to make contact with the new landlord by telephone but the person answering was unable to speak English or he was referred back to the original landlord. Eventually, he was able to obtain an address for the new landlord permitting service of the present application.

The tenant stated that, apart from the application, she had not provided the new landlord with a forwarding address in writing, signed and demanding return of the deposits.

Analysis

By definition in the *Act*, a landlord includes the successor in title to a rental unit and all rights and obligations of the landlord originating the rental agreement pass to the new landlord. As the new landlord held title to the rental unit at its conclusion on March 31, 2010, I find that the new landlord was responsible for return of the deposits.

If the new landlord had not received the Notice to End Tenancy as claimed or the deposits were not taken into account in the statement of adjustments, that is a matter between the landlords.

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. 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..."

In this matter, I find as fact that the landlords did not make application to claim on the deposit within 15 days of the end of the tenancy. However, I must find that they were not provided with the tenant's forwarding address in writing. Although the address was provided on the Notice of Hearing documents, it is reasonable for a respondent to consider the matters in dispute in abeyance until the hearing. Therefore, I cannot double the amounts.

Thus I find that the tenant is entitled to return of the security and pet damage deposits plus recovery of the filing fee minus the \$100 early termination fee as directed by the tenant, an amount calculated as follows:

To return the security deposit (no interest due)	\$ 650.00
To return the pet damage deposit (no interest due)	650.00
Filing fee	<u>50.00</u>
Sub total	\$1,350.00
Less "cancellation fee"	<u>- 100.00</u>
TOTAL	\$1,250.00

Conclusion

The tenant's copy of this decision is accompanied by a Monetary Order for **\$1,250.00** enforceable through the Provincial Court of British Columbia, for service on the landlord.

October 21, 2010