

Decision

Dispute Codes: MNSD, FF

Introduction

This hearing dealt with an application by the tenant for the double return of the security deposit, and recovery of the filing fee. The tenant participated in the hearing and gave affirmed testimony. Despite being served by way of registered mail with the application for dispute resolution and notice of hearing (the “hearing package”) the landlord did not appear.

Issues to be decided

- Whether the tenant is entitled to either or both of the above under the Act

Background and Evidence

What was a month-to-month tenancy began on October 15, 2009 and ended on February 27, 2010. The tenant sublet a room in a basement suite from the landlord who is party to a tenancy agreement in regard to the unit with the owner of the house. At the start of tenancy, monthly rent was \$450.00, but later the parties agreed to raise this to \$500.00 with all utilities included. A security deposit of \$225.00 was collected at the outset of tenancy.

After the end of tenancy, by way of letter to the landlord from the tenant’s counsel, dated April 14, 2010, the tenant informed the landlord of her forwarding address and requested the return of her security deposit. The tenant testified that this letter was sent by way of registered mail and was successfully delivered to the landlord. However, the landlord did not subsequently return the tenant’s security deposit.

Thereafter, the tenant filed an application for dispute resolution on June 21, 2010 and, as earlier stated, the hearing package was sent to the landlord by way of registered

mail. The tenant testified that the hearing package was returned to her after being unclaimed by the landlord.

Analysis

The full text of the Act, regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

Section 90 of the Act speaks to **When documents are considered to have been received**, and provides that a document sent by registered mail is deemed to have been received “on the 5th day after it is mailed.”

Section 38 of the Act speaks to **Return of security deposit and pet damage deposit**, and provides in part 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.

Further, section 38(6) of the Act provides:

38(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.

Based on the documentary evidence and the affirmed / undisputed testimony of the tenant, I find as follows:

- that the landlord has been informed in writing of the tenant's forwarding address;
- that the landlord has been properly served with the hearing package;
- that the landlord has failed to either return the tenant's security deposit or file an application for dispute resolution within 15 days after being informed in writing of the tenant's forwarding address;
- that, pursuant to the above legislation, the tenant has established entitlement to the double return of the security deposit in the amount of \$450.00 (2 x \$225.00), and
- that as the tenant has succeeded in her application, she is entitled to recovery of the \$50.00 filing fee.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$500.00** (\$450.00 + \$50.00). Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and enforced as an order of that Court.

DATE: November 3, 2010

Dispute Resolution Officer