

Decision

Dispute Codes: MNSD, FF

Introduction

This hearing dealt with an application by the tenant for the return of her security & pet damage deposits, in addition to recovery of the filing fee. The tenant participated in the hearing and gave affirmed testimony.

Two landlord(s) / respondent(s) are named in the tenant's application. Neither landlord appeared at the hearing. Service of the tenant's application for dispute resolution and notice of hearing (the "hearing package") is addressed below.

Issues to be decided

- Whether the hearing package(s) was properly served for the purposes of the Act, and whether the tenant is entitled to either of the above under the Act

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on September 1, 2009 and ended on March 31, 2010. Rent in the amount of \$825.00 was payable in advance on the first day of each month. A security deposit of \$412.50 and a pet damage deposit of \$250.00 were collected on August 28, 2009. Landlord (agent) "VH" completed a move-out condition inspection at the end of tenancy.

After the end of tenancy, by letter dated June 9, 2010, the tenant informed the landlord (owner) and the landlord (agent) of her forwarding address, and requested the return of her security & pet damage deposits. The tenant's letter was sent to the address of the rental unit as well as to the office address of the landlord (agent) "VH," who is also a realtor. The tenancy agreement itself includes no address for service of documents to the landlord (owner) or the landlord (agent), and the tenant testified that the landlord (agent) declined to provide her with the direct mailing address of the landlord (owner).

The status of the tenant's registered mailing of the letter, which included her forwarding address, to the rental unit address is shown on the Canada Post tracking website as follows: "Recipient not located at address provided. Item being returned to sender."

However, the status of the tenant's registered mailing of the letter, which included her forwarding address, to the office address of landlord (agent) "VH" is shown on the Canada Post tracking website as "successfully delivered."

As for service of the hearing package, the tenant sent the package by way of registered mail to both of the addresses, as above. The status of each, as shown on the Canada Post tracking website, mirrors the outcome described above.

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/

The Act defines landlord, in part, as follows:

"landlord", in relation to a rental unit, includes any of the following:

- (a) The owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

Section 89 of the Act speaks to service of documents and, in particular, to **Special rules for certain documents**, and provides in part as follows:

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71(1) [*director's orders: delivery and service of documents*].

Based on the documentary evidence and the affirmed / undisputed testimony of the tenant, while neither landlord attended the hearing, I find that the landlords have been sufficiently served with the hearing package for the purposes of the Act.

Section 38 of the Act addresses **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:

- (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.

As the landlords have not filed for dispute resolution, or repaid the tenant's security & pet damage deposits within 15 days following receipt of her forwarding address in writing, I find that the tenant is entitled to the double return of her security & pet damage deposits in the total amount of \$1,325.00 [(\$412.50 + \$250.00) x 2]. As the tenant has succeeded in her application, I find she is also entitled to recover 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 **\$1,375.00** (\$1,325.00 + \$50.00). Should it be necessary, this order may be served on the landlords, filed in the Small Claims Court and enforced as an order of that Court.

DATE: November 8, 2010

Dispute Resolution Officer