

Decision

Dispute Codes: MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement, the double return of the security deposit, and recovery of the filing fee.

The tenant participated in the hearing and gave affirmed testimony. The tenant testified that he served the landlord with his application for dispute resolution and notice of hearing (the “hearing package”) by way of facsimile on or around June 21, 2010, which is the date when he filed his application. The landlord did not attend the hearing.

Issues to be decided

- Whether the landlord was properly served with the hearing package, and whether the tenant is entitled to any or all of the above under the Act, regulation or tenancy agreement

Background and Evidence

There is no copy of a written tenancy agreement in evidence for what is understood to have been a month-to-month tenancy beginning on October 1, 2008 and ending on July 31, 2009. Rent in the amount of \$950.00 was payable in advance on the first day of each month. A security deposit of \$475.00 was collected at the outset of tenancy.

After the end of tenancy, the tenant informed the landlord of his forwarding address in writing by letter dated October 15, 2009, and requested the return of his security deposit. However, as the landlord has not responded, the tenant filed an application for dispute resolution.

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 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.

Section 89 of the Act speaks to service of documents and, in particular, to the **Special rules for certain documents**, 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 affirmed testimony of the tenant, I find that the tenant's method of serving the hearing package on the landlord by way of facsimile does not satisfy any of the above statutory provisions addressing service.

Conclusion

Pursuant to all of the above, the application is hereby dismissed with leave to reapply.

DATE: November 4, 2010

Dispute Resolution Officer