DECISION

Dispute Codes: MNSD and FF

Introduction

This application was brought by the tenant seeking return of his security deposit in double on the grounds that the landlord did not return it or make application to claim on it 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 landlord.

Issues to be Decided

This application requires a decision on whether the tenant is entitled to a Monetary Order for return of his deposit and whether the amount should be doubled, and whether the tenant should recover the filing for this proceeding.

Background and Evidence

This tenancy began on December 1, 2008. Rent was $928 per month and the landlord holds a security deposit of $447.50.

As a matter of note, the applicant tenant did not provide a copy of the rental agreement, proof of having provided the landlord with a forwarding address in writing as prescribed at section 39 of the *Act* or proof of service of the Notice of Hearing, a matter rendered moot by the landlord's appearance.

In addition, the landlord gave uncontested evidence that the tenant did not give full notice as required under section 45 of the *Act*, advising the landlord on February 8, 2010 that he would be vacating on February 28, 2010. The landlord accepted late notice and was able to find new tenants for March 1, 2010, although they moved in some days later.

The building manager stated that he had spoken with the tenant a number of times during the last week of the tenancy and reminded him of the need for the two to complete a joint move-out inspection report. The landlord stated that when he had been unable to confirm a time, he telephone the tenant at a number left by the tenant to arrange the inspection, but he did not hear back.

The tenant responded to the message when he went to return the key on March 3, 2010, saw the completed inspection report form but declined to sign it as the building manager was not present.

The landlord made some deductions from the security deposit and returned $151 to the tenant on April 29, 2010, the only evidence that the landlord had a forwarding address. The tenant did not cash that cheque and the parties concur that the cheque is now stale dated.

Analysis

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 must find as fact that the landlord did not make application to claim the deposit within 15 days of the end of the tenancy.

However, in the absence of documentary proof that the tenant provided the forwarding address in writing and my acceptance of the building manager's evidence that he made repeated efforts to conduct the move-out inspection, I find that the tenant is not entitled to return of the deposit in double.

However, I must find that the landlord erred in failing to provide final notice for the move-out inspection report on the prescribed form as required under *Regulation* 17(2)(b).

Therefore, having found that both parties erred in complying fully with the *Act,* I find that the landlord must return the full security deposit but not in double. For the same reason, I decline to award recovery of the filing fee.

During the hearing, the tenant agreed that the he would return the stale dated cheque for $151 sent to him by the landlord.

I acknowledge the landlord's truthfulness in giving testimony on some points while being fully aware the evidence given would favour the tenant.

Conclusion

The tenant's copy of this decision is accompanied by a Monetary Order for **$447.50,** enforceable through the Provincial Court of British Columbia, for service on the landlord.

November 3, 2010