

Decision

Dispute Codes MNDC, MNSD, AAT, SS, FF

Introduction

This hearing was convened in response to an application from the tenant seeking:

1. A monetary Order for the return of all or part of the pet damage deposit or security deposit;
2. An Order allowing access to (or from the unit or site for the tenant or the tenant's guests;
3. An Order to recover the filing fee for the cost of this application; and
4. An Order to serve documents or evidence in a different way than required by the Act.

Total monetary order sought: \$375.00 plus the filing fee.

Both parties appeared at the hearing and gave evidence under oath.

Issue(s) to be Decided

Whether the tenant has proved her claims and is entitled to any of the Orders sought.

Background and Evidence

The tenant testified that this tenancy ended on October 27, 2010 at which time the tenant provided her forwarding address to the building manager when they completed the move-out Condition Inspection Report together. The tenant says that she did receive a cheque for the full deposit of \$375.00 from the landlord from the landlord in February 2011, long after the 15 day time limit. The tenant testified that she still has this cheque as she did not cash it pending the outcome of this application.

With respect to her other applications, the tenant says she did not make an application seeking substituted service. The tenant says that while she was living at the rental unit the intercom system did not work for 10 months and the tenant is seeking a substituted service for that missing service in order to gain access to or from the rental unit for the The landlord testified that the building manager did the walk through move-out inspection and did receive the tenant's forwarding address on October 27, 2010 the date on which this tenancy ended. The landlord testified that the building manager is not her agent and he did not give the landlord the forwarding address until sometime

later and a cheque was dated and mailed to the tenant on November 15, 2010. The tenant later informed the landlord that she had never received this cheque so the landlord put a stop payment on it and mailed another cheque in February 2011.

Analysis

Section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit if the landlord believes there is cause.

If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the deposit (section 38(6)). If the tenant does not supply his forwarding address in writing within a year, the landlord may retain the deposit.

The landlord's own evidence is that this tenancy ended on October 27, 2010 at which time the tenant supplied her forwarding address on the Condition Inspection Report prepared by the tenant and the landlord's agent. The landlord says her agent did not give the address to her until after October 27, 2010 however, as this person was acting as the landlord's agent in performance of the move-out inspection, I find that the date the forwarding address was received by the landlord was October 27, 2010 even if the landlord's agent did not pass the address onto the landlord herself until later. This means that the landlord had 15 days from October 27, 2010 to provide the tenant with the return of her deposit or make application to retain it. By her own evidence the landlord did not mail a cheque until November 15, 2010 dated November 15, 2010. This is over the time limit set out in the Act and the tenant is therefore entitled to double the deposit paid. As the tenant currently already holds a cheque in the sum of \$375.00 representing the actual deposit paid, I will award the tenant a monetary award for \$375.00 and direct the tenant to cash the cheque she currently holds in order to realize a full repayment of double the security deposit.

As this tenancy ended on October 27, 2010 I dismiss the tenant's application for access to or from the rental unit.

As the landlord has appeared at this hearing having received the Notice of Hearing, Application for Dispute Resolution and evidence, I dismiss the tenant's application for substituted service of this application and/or evidence as it is not required.

Having been successful in this application, as set out above, I find further that the tenant is entitled to recover the \$50.00 filing fee paid for this application.

Total monetary award payable by the landlord to the tenant:

Security Deposit paid on August 1, 2009	\$375.00
Double Security Deposit	375.00
Interest on original amount paid from date security deposit paid to date of this order	0.00
Less cheque already received by tenant	-375.00
Filing Fees	50.00
TOTAL MONETARY AWARD	\$425.00

The tenant is provided with an Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.