

Decision

Dispute Codes: MNSD, OLC

Introduction

This hearing was convened in response to an application by the tenants for a monetary order as compensation for the return of the security deposit / and an order instructing the landlord to comply with the Act, Regulation or tenancy agreement. Male tenant "DF" 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. Evidence submitted by the tenants includes the Canada Post tracking number for the registered mailing, and information on the Canada Post website confirms that the hearing package was "successfully delivered" to the landlord.

Issues to be decided

- Whether the tenants are entitled to either or both of the above under the Act, Regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the original fixed term of tenancy was from April 15, 2006 to April 31, 2007. Thereafter, tenancy continued on a month-to-month basis until on or about February 28, 2011 when, by mutual agreement, the parties ended the tenancy. Monthly rent at the time when tenancy ended was \$1,450.00. On or about April 15, 2006 a security deposit of \$600.00 was collected. While there is no copy in evidence, the tenant testified that the parties completed a move-in condition inspection and report near the start of tenancy.

The tenant also testified that on or about February 28, 2011 the parties undertook a move-out condition inspection, however, the landlord did not at that time have with him a move-out condition inspection report form. Nevertheless, the tenant testified that there did not appear to be any major disagreements between the parties that the unit was left in reasonable condition.

Subsequently, however, the landlord completed a move-out condition inspection report on his own and noted, variously, that certain items were “dirty,” that there were “holes,” that other items were “damaged, need repair,” and so on. The landlord did not provide the tenants with a copy of this report until after the tenants had again informed him, this time by way of e-mail dated March 17, 2011, of their forwarding address for the purposes of returning their security deposit. By way of e-mail response to the tenants on that same date, the landlord stated in part as follows:

I have not filled in the amount to be deducted from the Deposit, but after fixing the window, the acrylic sheet to the underside of the stair, the lights, and cleaning up after you, I am sure that you will agree this will amount to more than the deposit.

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 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) 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 that the landlord was informed by e-mail on March 17, 2011 of the tenants' forwarding address. The landlord's e-mail reply to the tenant's e-mail on that same date, serves to confirm the landlord's receipt of the particulars of the forwarding address.

I further find that the landlord did not subsequently comply with the above statutory provisions by either, returning the security deposit, or filing his own application for dispute resolution within 15 days after March 17, 2011. Accordingly, pursuant to section 38 of the Act, as above, I find that the tenants have established entitlement to the double return of their security deposit, plus applicable interest in the total amount of \$1,220.37. This total is comprised of double the amount of the original security deposit of \$1,200.00 (2 x \$600.00), plus interest of \$20.37.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of \$1,220.37. 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.

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*.

DATE: July 15, 2011

Residential Tenancy Branch