

Decision

Dispute Codes: MNDC, MNSD, OLC

Introduction

This hearing dealt with the tenant's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / compensation reflecting the double return of the combined security / pet damage deposits / and an order instructing the landlords to comply with the Act, Regulation or tenancy agreement.

The tenant 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 landlords did not appear. The tenant's evidence includes the Canada Post tracking numbers for both registered mailings. Further, the Canada Post website instructs that both hearing packages were "successfully delivered."

Issues to be decided

- Whether the tenant is entitled to any or all of the above under the Act, Regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement, the 6 month term of tenancy was from October 1, 2010 to March 31, 2011. Monthly rent of \$2,900.00 was payable in advance on the first day of each month. A security deposit of \$1,450.00 and a pet damage deposit of \$725.00 were both collected on September 24, 2010. There is no move-in condition inspection report in evidence.

In mid-February 2011 the tenant informed the landlords of his intent to end the tenancy effective at the end of the term on March 31, 2011.

After paying the full amount of rent due for March 2011, on or about March 10, 2011 the tenant informed the landlords that he may be ready to vacate the unit around mid month. He later instructed them that he needed a few more days. When he returned to the unit to gather up the remainder of his possessions on March 18, 2011, he found that the locks had been changed and that he could not gain entry to the unit. He contacted

the landlords on March 19, 2011 and undertook to have a discussion about the return of his possessions and the combined security / pet damage deposits. He found that the landlords had packed his remaining possessions in garbage bags. As a result, the tenant claims that some of his possessions had been either damaged or broken. The tenant said the landlords then complained to him about a stain in the carpet and informed him that visitors would be staying in the unit for a few days. There is no move-out condition inspection report in evidence.

Thereafter, by way of letter dated March 21, 20[11], the tenant informed the landlords of his forwarding address for the purposes of the return of his security / pet damage deposits. Evidence submitted by the tenant includes the Canada Post tracking number for the registered mailing. Despite this, the security / pet damage deposits have not been repaid.

The tenant stated that in May 2011 he moved from the forwarding address which he provided to the landlords. However, in any event, no mail was subsequently forwarded to him at his new address.

Neither has the tenant received any repayment of the security / pet damage deposits from the landlords since they were informed of his current address by way of his application for dispute resolution, which was filed on April 8, 2011.

The tenant seeks the double return of his combined security / pet damage deposits, in addition to reimbursement of pro-rated rent for the 12 day period from March 20 to 31, 2011 when he was denied further access to the unit.

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 30 of the Act speaks to **Tenant's right of access protected**, and provides in part:

30(1) A landlord must not unreasonably restrict access to residential property by

(a) the tenant of a rental unit that is part of the residential property, ...

Section 31 of the Act addresses **Prohibitions on changes to locks and other access**, and provides in part:

31(1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

(1.1) A landlord must not change locks or other means of access to a rental unit unless

(a) the tenant agrees to the change, and

(b) the landlord provides the tenant with new keys or other means of access to the rental unit.

Section 38 of the Act speaks to **Return of security deposit and pet damage deposit**, and provides in part:

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.

Based on the documentary evidence and affirmed / undisputed testimony of the tenant, I find that prior to the end of the term and prior to the point at which the tenant had given

possession of the unit back to the landlords, the landlords changed the locks on the unit without the tenant's consent, and without providing him with new keys or other means of access. In the result, I find that the tenant has established entitlement to reimbursement of rent, as claimed, for the 12 day period from March 20 to 31, 2011 in the amount of \$1,122.60, which is calculated as follows:

$\$2,900.00 \text{ (monthly rent)} \div 31 \text{ (days in March)} = \$93.55 \text{ (daily rent)}$

$\$93.55 \text{ (daily rent)} \times 12 \text{ (days of no access)} = \underline{\$1,122.60}$

I further find that as the landlords neither repaid the security / pet damage deposits, nor filed an application for dispute resolution within 15 days of either the end of tenancy or the date when they were informed in writing of the tenant's forwarding address, the tenant has established entitlement to the double return of these combined deposits in the total amount of \$4,350.00 $(\$1,450.00 + \$725.00 \times 2)$.

The tenant has not applied to recover the 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 **\$5,472.60** $(\$1,122.60 + \$4,350.00)$. 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.

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 21, 2011

Residential Tenancy Branch