

Decision

Dispute Codes: MNSD, FF

Introduction

This hearing was convened in response to the tenant's application for a monetary order as compensation for the double return of the security deposit / and recovery of the filing fee. The tenant participated in the hearing and gave affirmed testimony.

Despite in-person service of the application for dispute resolution and notice of hearing (the "hearing package") on the landlord's wife on April 20, 2011, the landlord did not appear. The landlord's wife, along with her husband, is named as a landlord on the residential tenancy agreement.

Issues to be decided

- Whether the tenant is entitled to either or both of the above under the Act

Background and Evidence

Pursuant to a written tenancy agreement, the tenancy began on May 11, 2007. Monthly rent of \$1,800.00 was payable in advance on the first day of each month, and a security deposit of \$900.00 was collected on April 29, 2007. There is no evidence of a move-in condition inspection report.

By letter dated April 30, 2010, the tenant gave notice to end tenancy effective June 1, 2010. There is no evidence of a move-out condition inspection report.

In response to a previous application by the tenant for the double return of the security deposit, a hearing was held on January 28, 2011 (file # 762792). The dispute resolution officer was not satisfied that there was sufficient evidence to support the tenant's claim that her forwarding address had been provided in writing to the landlord at the end of tenancy. In the result, the tenant's application was dismissed with leave to reapply.

Subsequently, the tenant applied for review of the above decision. However, by way of review decision dated February 23, 2011, the decision of January 28, 2011 was upheld. In the review decision the dispute resolution officer stated, in part, as follows:

The [tenant] is therefore free to serve her forwarding address on the landlord by a means which she can document and make her application again should the landlord fail to either return the deposit or make application to retain it.

Thereafter, the tenant informed the landlord in writing of her forwarding address by letter dated March 9, 2011. The letter was sent to the landlord by registered mail. Evidence submitted by the tenant includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the letter was “successfully delivered.” However, the tenant has still not received any reimbursement of her security deposit from the landlord.

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**, 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.

Based on the documentary evidence and the affirmed / undisputed testimony of the tenant, I find that the landlord has not complied with the above statutory provisions.

Accordingly, I find that the tenant has established entitlement to a claim of \$1,872.78. This is comprised of double the security deposit totaling \$1,800.00 (2 x \$900.00), interest calculated on the original amount of the security deposit of \$22.78, in addition to the \$50.00 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 **\$1,872.78**. 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: August 8, 2011

Residential Tenancy Branch