



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD and FF

Introduction

This application was brought by the tenant on August 29, 2011 seeking return of her security deposit in double on the grounds that the landlord did not return it or make application to claim upon it within 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address.

Issue(s) to be Decided

This matter requires a decision on whether the tenant is entitled to a Monetary Order for return of all or a portion of her security deposit and whether the amount should be doubled.

Background and Evidence

The tenancy in dispute began on June 1, 2010 and ended on June 30, 2011. Rent was \$1,895 per month and the landlord held a security deposit of \$947.50 paid on July 18, 2010.

During the hearing, the tenants submitted a copy of an email to the landlord dated July 11, 2011 noting that they keys to the rental unit had been returned to the concierge of the strata property building. The email provided the information that , "I have mail forwarding set up with Canada Post, please feel free to use the Bayview address," which was the name of the building containing the rental unit.

The landlord's reply enquired whether he should take a move-in fee off the deposit and asked for a reply "so I can send your cheque off next week."

The landlord stated that the tenants did not reply to the email and he thought matters were still under consideration when he was served with the notice of this hearing.

The landlord then sent the tenant an email noting that he had consulted with his accountant who advised that he had been awaiting confirmation of payment of the move-in fee before issuing the cheque. The landlord again asked the tenant for agreement to retain the \$150 from the security deposit but received no reply.

The landlord stated he was fined \$200 by the Strata Council for non payment of the move-in fee. He then subtracted the fine and the fee totalling \$350 from the security deposit and returned the remaining \$597.50 by cheque of November 4, 2011.

The tenant stated that confusion over the move-in fee appeared to arise as a result of a change of property management companies during the tenancy. She stated that when they were shown the rental unit and agreed to rent it, the property manager told her and her husband that they were lucky to be moving in at a time when there was no requirement for a move-in fee.

Analysis

Section 38(1) of the *Act* provides that a landlord must either return a security deposit or make application to claim upon it within 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address in writing. In the present matter, as noted, the tenants advised the landlord by email of July 11, 2011 to use "the Bayview" as their forwarding address as they had applied to Canada Post to forward their mail.

Section 88 of the *Act* which sets out the acceptable methods of service of documents does not make provision for service by email. Therefore, I must find that that the requirement of section 38(1) for provision of the forwarding address "in writing" has not been met.

The tenant submit that if that did not constitute service, then the landlord was provided with their address in their application of August 29, 2011 which the landlord received on September 1, 2011. The landlord stated that having been served with the Notice of Hearing, he believed the matter was now in abeyance pending the hearing. I concur that it was appropriate of the landlord to await the hearing. The landlord emailed the tenant again suggesting he pay the move-in fee to the strata corporation and deduct it from the deposit but received no reply.

Section 7 of the Act requires that a party claiming compensation for damage or loss under the legislation or rental agreement must do whatever is reasonable to minimize the loss. In the present matter, I find that the tenant failed to act reasonably to minimize her loss by failing to reply to the landlord's email of July 11, 2011 with clear direction that she expected the full deposit returned because of the representation of the property manager initiating the tenancy. Doing so may well have resulted in return of the full deposit on time and saved the landlord from paying the \$150 move-in fee and the \$200 fine.

Nevertheless, I find that the landlord retained the \$350 without the consent of the tenants and without an order that he may do so as required under the *Act*.

Therefore, I find that the tenant is entitled to a Monetary Order for the \$350 portion of the security deposit which was not returned plus \$50 in recovery of the filing for this proceeding for a total of \$400.00.

Conclusion

The tenant's copy of this decision is accompanied by a Monetary Order for \$400.00, enforceable through the Provincial Court of British Columbia, for service on the landlord.

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*.

Dated: November 17, 2011.

Residential Tenancy Branch