

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Tenant for the return of a security deposit, for compensation for damage or loss under the Act, regulations or tenancy agreement and to recover the filing fee for the application.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on October 20, 2011. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord's absences.

The Tenant said the Landlord did not accept the registered mail package with the Application and Notice of Hearing (the "hearing package") because the post office returned it to the sender (the Tenant) as refused. The Tenant provided a tracking number and post office receipt and he said the address for the Landlord was correct.

At the start of the conference call the Tenant said \$650.00 of the claim on this application is for a previous Monetary Order that the Landlord has not paid. The Tenant said he understood he can enforce the collection of that Monetary Order in Small Claims Court and it is not part of this application.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of the security deposit?
2. Is there a loss or damage and if so how much?
3. Is the Tenant entitled to compensation for the loss or damage and if so how much?

Background and Evidence

This tenancy started on April 1, 2011 as a month to month tenancy. The tenancy ended at the end of June, 2011. Rent was \$1,200.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$600.00 in March, 2011.

The Tenant said that he moved out of the rental unit at the end of June, 2011 and he gave the Landlord a forwarding address in writing with a previous application to the Residential Tenancy Branch in May, 2011. The Tenant said a move in condition inspection was done, but there was no move out condition inspection report completed. The Tenant continued to say that he cleaned the unit before leaving and he asked the Landlord for his security deposit back.

The Tenant said the Landlord has not returned any part of his security deposit as of the date of this conference call and therefore he is applying for double his security deposit as indicated in the Act.

Analysis

Section 38 (1) says that 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.

And Section 38 (6) says 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.

I accept the Tenant's testimony that he gave the Landlord a forwarding address in writing in May, 2011 and the Tenancy ended by June 30, 2011. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or 15 days after receiving the Tenant's forwarding address in writing, nor did the Landlord apply for dispute resolution by July 15, 2011. Consequently I find for the Tenant and grant an order for double the security deposit of \$600.00 in the amount of $\$600.00 \times 2 = \$1,200.00$.

As the Tenant was successful in this matter; I also order the Tenant to recover the filing fee of \$50.00 from the Landlord. Pursuant to section 67 a monetary order for \$1,250.00

has been issued to the Tenant. This Monetary order represents double the security deposit in the amount of \$1,200.00 and the filling fee of \$50.00 totally \$1,250.00.

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38 and 67 of the Act, I grant a Monetary Order for \$1,250.00 to the Tenant. The order must be served on the Respondent and is enforceable through the Provincial Court of British Columbia (small claims court) 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*.

Residential Tenancy Branch