

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested return of double the pet deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

The tenant provided affirmed testimony that copies of the Application for Dispute Resolution and Notice of Hearing were sent to each of the landlords on November 21, 2012; via registered mail, to the addresses noted on the Application. The tenant has a Canada Post tracking number and receipts for each registered mail packages. During the hearing the tenant checked the Canada Post web site and found that the female landlord had accepted her registered mail on November 22, 2012.

The male landlord did not claim the registered mail. The tenant used an address given to her by the male landlord, as part of a notice of rent increase issued in 2008; the year after the landlord purchased the rental unit. No other address for service for that landlord was given to the tenant.

A failure to claim registered mail does not avoid service. Therefore, I find, pursuant to section 71(2)(b) of the Act, that the male landlord was sufficiently served with Notice of this hearing.

The female landlord signed accepting the registered mail. Therefore, I find that she was served with Notice of the hearing.

Neither landlord attended the hearing.

Issue(s) to be Decided

Is the tenant entitled to return of double the pet deposit paid?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenancy commenced in 2006; the tenant supplied a copy of a June 20, 2006 receipt issued in the sum of \$1,100.00 for the pet and security deposit payment of \$550.00 each. This receipt was issued by the original landlord.

In 2007 the rental property was sold. The tenant supplied a copy of a November 16, 2012 email forwarded to her by the spouse of the female landlord. The email had been issued by an individual who provided an explanation of the sale and indicated that in May 2007 the 2 respondents and a 3rd person had purchased the home. The email explained that the purchasers were not made aware of the deposits that had been paid and that the Statement of Adjustment had been silent on that issue. The email goes on to explain that the original landlord had been asked to return the deposit and that attempts were being made to locate the seller.

The tenant stated that she vacated the rental unit on October 15, 2012; a condition inspection report was completed with the landlord several days later. The tenant signed the inspection report and wrote her forwarding address on that report. The landlord did not return the pet deposit until a cheque was issued and mailed to the tenant on January 1, 2013 in the sum of \$554.54; for the deposit and interest. A copy of the cheque and the envelope sent to the tenant were supplied as evidence.

A copy of an October 23, 2012 letter sent by the tenant to the female landlord indicated that the inspection had occurred on October 21, 2012 and that the security deposit had been returned at that time. The landlord had referred the tenant to the original agent as transfer of a pet deposit had not occurred when the property was sold. The tenant's letter explained that the deposits were to be transferred and that it was not now the responsibility of the previous owner to return the deposit to the tenant.

The tenant is claiming return of the balance of her claim; the difference between what the landlord has paid and double the pet deposit that is owed.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

When a rental property is sold the Act provides:

Obligations pass with transfer or assignment of land

93 *The obligations of a landlord under this Act with respect to a security deposit or a pet damage deposit run with the land or reversion*

Therefore, once the current landlords purchased the property in 2007, they became responsible for the deposits held in trust. The failure of the seller to provide deposit information as part of the Statement of Account cannot result in a loss to a tenant. The landlord may have misunderstood their responsibilities in relation to payment of the deposits and may not have been informed of the pet deposit by the seller; however, this does not relieve the landlord from complying with the Act. The receipt provided by the tenant as evidence indicated that a pet deposit had in fact been paid.

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposits paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

When the tenant provided her forwarding address in writing, as part of the inspection completed in October 2012, and again as part of her October 21, 2012 letter, the landlord had 15 days in which to return the deposit in full. I find that at least by the October, 31 2012, the landlord had the tenant's forwarding address, which was eventually used to return the pet deposit to the tenant. As the landlord failed to return the deposit within 15 days of receipt of the written forwarding address, I find that the tenant is entitled to return of double the pet deposit.

There was no evidence before me of any application made by the landlord claiming against the pet deposit for damage caused by the pet.

Therefore, I find that the tenant is entitled to return of double the \$550.00 pet deposit, plus interest in the sum of \$18.15; less the amount returned, \$554.54. Interest has been calculated using the interest calculator on the Residential Tenancy Branch web site.

I find that the tenant's application has merit and that the tenant is entitled to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Double Pet deposit paid	\$1,100.00
Interest from June 20, 2006	18.15
Less amount repaid	554.54
Plus filing fee	50.00
TOTAL	\$613.61

Based on these determinations I grant the tenant a monetary Order in the sum of \$613.61. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court

Conclusion

The tenant is entitled to return of double the pet deposit, plus interest; less the sum previously returned.

The tenant is entitled to filing fee costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: February 22, 2013

Residential Tenancy Branch

