



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WL Rentals Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD; FF

Introduction

This is the Tenant's application return of the security deposit and to recover the cost of the filing fee from the Landlords.

The Tenant gave affirmed testimony at the Hearing.

The Tenant testified that the Notice of Hearing documents were mailed to each of the Landlords, via express post, on September 17, 2013. The Tenant testified that he searched the Canada Post web site and determined that the documents were received by the Landlord TS (TS) and the corporate Landlord. However, the documents that were sent to the Landlord KB (KB) were returned to the Tenant, unclaimed, on October 4, 2013. The Tenant provided tracking numbers for the documents.

Based on the Tenant's affirmed testimony, I am satisfied that the Landlords were served with the Notice of Hearing documents. Service in this manner is deemed to be effected 5 days after mailing the documents, whether or not a party chooses to receive the documents. Despite being served with the Notice of Hearing documents, the Landlords did not sign into the teleconference and the Hearing proceeded in their absence.

Issues to be Decided

- Is the Tenant entitled to a monetary order pursuant to the provisions of Section 38 of the Act?

Background and Evidence

This tenancy began on February 1, 2013. The Tenant paid a security deposit in the amount of \$500.00 at the beginning of the tenancy.

The Tenant testified that on February 27, 2013, he gave the Landlord written notice that he was ending the tenancy effective March 31, 2013. The Tenant stated that his notice to end the tenancy included his forwarding address. The Tenant testified that he moved

out of the rental unit on March 22, 2013, and that he and the KB did a “walk through” together.

The Tenant stated that no written Condition Inspection was done, however he remembers that the rental unit was clean and undamaged. The Tenant was expecting the Landlord to return his security deposit in full.

The Tenant testified that he spoke to KB on April 18, 2013, who told the Tenant that he would have to speak to TS. The Tenant called TS, who advised him that the cheque was in the mail. The Tenant spoke to both KB and TS again on May 15, 2013. TS stated that she would call the Tenant back, but no call was returned.

The Tenant testified that he sent a demand letter to the corporate Landlord and demanded return of the security deposit, however the Tenant has still had no response from the Landlords.

Analysis

A security deposit is held in a form of trust by the Landlords for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's written consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

Based on the Tenant's undisputed affirmed testimony, I find that the Tenant provided his forwarding address in writing to the Landlords on February 27, 2013, and that the tenancy ended on March 22, 2013. The Landlords have not returned the security deposit or made an application against it. Therefore, I find that the Landlords have not complied with Section 38(1) of the Act.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit. Therefore, I find that the Tenant is entitled to a monetary order for double the amount of the security deposit in the amount of **\$1,000.00**.

The Tenant has been successful in his application and I find that he is entitled to recover the cost of the **\$50.00** filing fee from the Landlords.

Conclusion

I hereby provide the Tenant with a Monetary Order in the amount of **\$1,050.00** for service upon the Landlords. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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*.

Dated: November 22, 2013

Residential Tenancy Branch