



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Central Pacific Realty Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, MNSD

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for a monetary Order for return of the security deposit.

The tenant provided affirmed testimony that copies of the Application for Dispute Resolution and Notice of Hearing were sent on November 18, 2013, to the landlord via registered mail at the address noted on the application. A Canada Post tracking number and receipt was provided as evidence of service.

The tenant obtained the landlord's address from an internet web site. The web site included the same telephone number as that notated by the landlord on a receipt that had been issued to the tenant. The tenant also went to the landlord's place of business and was able to establish that the manager worked at the same address. The tenant provided a copy of the internet search and a photograph of the business, which shows the same phone number which was included on the receipt issued by the landlord.

A copy of the envelope was provided as evidence of service; it showed that the mail was not claimed by the landlord.

Refusal to claim registered mail does not allow a party to avoid service. Therefore, these documents are deemed to have been served in accordance with section 89 and 90 of the Act. The landlord did not appear at the hearing.

The tenant said that he had attempted to personally serve the landlord the documents on November 15, 2013. When he and friend went to the landlord's place of business an altercation occurred, with the landlord locking the tenant inside of the building. The police were called but after approximately twenty minutes the landlord unlocked the door.

Preliminary Matters

The tenant supplied a CD which he said contained a recording of the altercation that occurred when he attempted to personally serve the landlord on November 15, 2013. As the tenant did not ensure that the landlord was able to view the digital evidence at least 5 days prior to the hearing, as required by Residential Tenancy Branch Rules of Procedure, that evidence was not considered.

Issue(s) to be Decided

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

Background and Evidence

The tenant testified that on August 11, 2013 he paid the landlord a security deposit in the sum of \$432.50. A copy of a receipt issued by the landlord's agent was supplied as evidence. The receipt indicated the name of the agent, the rental unit address, the name of the manager, the landlord's business name and landlord telephone number.

The month-to-month tenancy was to commence on September 1, 2013. A tenancy agreement was not signed.

On August 16, 2013 the tenant told the landlord he would not move into the unit. Several days later the tenant called the landlord's office, to request return of the deposit. The landlord's secretary told the tenant that the unit had been rented by someone else. The tenant's friend overheard this conversation. The deposit was not returned.

The tenant supplied a copy of a September 25, 2013 letter which was given to the landlord's secretary on that date. The letter outlined the amount of the deposit paid, the date the tenant gave notice that he would not move in, an assertion the tenant had cancelled the tenancy and the tenant's forwarding address.

The tenant has not received the deposit and has been called by a lawyer of the landlord and told not to contact the landlord by telephone.

Analysis

I have considered the tenant's submission that a security deposit was paid as part of a tenancy agreement. Section 16 of the Act provides:

Start of rights and obligations under tenancy agreement

16 *The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.*

The tenant did not occupy the unit, but I find, from the evidence before me that the parties entered into a tenancy agreement on August 11, 2013 when the security deposit was paid.

Section 17 of the Act provides:

Landlord may require security deposit

17 A landlord may require, in accordance with this Act and the regulations, a tenant to pay a security deposit as a condition of entering into a tenancy agreement or as a term of a tenancy agreement.

As the security deposit was paid, I find, on the balance of probabilities, that the landlord accepted the deposit as a condition of entering into the agreement.

The tenant ended the tenancy prior to the time he was to take possession of the unit; he was told that the landlord went on to rent the unit for September 1, 2013, the date the tenant was to move into the unit. Therefore, pursuant to section 44(f) of the Act, I find that the tenancy ended on the date the tenant gave notice, August 16, 2013. The notice given was not in accordance with section 45 of the act, but the tenant did end the agreement.

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 deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

From the evidence before me I find that the landlord was given the tenant's written forwarding address on September 25, 2013; the date the tenant delivered the letter to the landlord's secretary at the landlord's place of business. The landlord then had until October 10, 2013 to either return the deposit or submit a claim against the deposit. There was no evidence before me that the landlord did either.

Therefore, pursuant to section 38(6) of the Act, I find that the tenant is entitled to return of double the \$432.50 security deposit that was paid to the landlord. Even though the tenant ended the tenancy contrary to the Act; the tenancy did end and the landlord was required to disburse the deposit in accordance with the legislation.

I find that the tenant has established a monetary claim, in the amount of \$865.00, which is comprised of double the security deposit.

Based on these determinations I grant the tenant a monetary Order in the sum of \$865.00. 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 security deposit.

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: March 04, 2014

Residential Tenancy Branch

