

DECISION

Dispute Codes LANDLORD: MNDC, O, FF
TENANT: MNSD

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking compensation for loss or damage under the Act, regulations and tenancy agreement, to recover the filing fee and for other considerations.

The Tenant filed to recover double their security and pet deposits.

Service of the hearing documents by the Landlord to the Tenants were done by registered mail on April 21, 2017 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlord were done by a hired process server on April 13, 2017. The Landlord said they did not receive the Tenants' hearing package until April 21, 2017. The male Tenant read the process server's affidavit to the hearing. The affidavit said the process server delivered the Tenants' hearing package on April 13, 2017 by personal delivery to a person Y.C. in the Landlord's Agent's office. I accept the Tenants served the Landlord or her agent in person on April 13, 2017 in accordance with section 89 of the Act. It appears the Landlord's agent's office may not have forwarded the Tenant's package to the Landlord's agent until April 21, 2017.

Both parties confirmed receiving the other parties hearing package.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to compensation for loss or damage and if so how much?
2. What other considerations are there?

Tenant:

1. Is the Tenant entitled to the return of double the security and pet deposits?

Background and Evidence

This tenancy was to start on March 24, 2017 as a fixed term tenancy with an expiry date of March 31, 2019. Rent was to be \$6,800.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$3,400.00 and a pet deposit of \$3,400.00 on February 20, 2017. The Tenant said that the Landlord did not want to do the move in condition inspection with the Tenant but would complete the report and forward it to the Tenant for signing. The male Tenant said this was not acceptable to him as the rental unit was in poor condition and he requested to end the tenancy. The Landlord said they would clean the unit or end the tenancy. On March 24, 2017 the parties signed a Mutual Agreement to End Tenancy dated and effective March 24, 2017.

The Tenants said that they did not move into the rental unit and on March 24, 2017 the male Tenant personally delivered the Tenants' written forwarding address to the Landlord's Agent's office. Further the female Tenant submitted an email dated April 12, 2017 that said the Tenants had dropped off their forwarding address on March 24, 2017 and were expecting the return of their full security and pet deposits.

The Landlord's Agent said they submitted an email dated April 12, 2017 stating the Landlord's Agent could not find the Tenants' written forwarding address but when the Landlord received the Tenants' forwarding address the Landlord's Agent would return the pet deposit. The email also said the Landlord had instructed the Agent to make an application to retain the Tenants' security deposit. The Landlord said they received the Tenants' forwarding address on April 13, 2017. The Landlord continued to say they have not returned either deposit as they now have made an application to retain part of the deposits.

Further the Landlord's Agent said the Landlord instructed them to apply for lost rental income for March 24, 2017 to March 31, 2017 in the amount of \$1,754.00 and for April. 2017 rent of \$6,800.00 for a total claim of \$8, 554.00. The Landlord's Agent said the unit was rented on May 1, 2017.

The Parties were given an opportunity to settle this matter. The Tenant offered to settle the matter for the return of double the pet deposit and the original security deposit in the total amount of \$10,200.00. The Landlord decline and offered the Tenant the original pet and security deposit back in the amount of \$6,800.00. The Tenant declined and both parties requested a decision on the matter.

Analysis

With regards to the Landlord's application. On March 24, 2017 the Landlord's Agent and the Tenant signed a Mutual Agreement to End the Tenancy with no conditions. The Tenancy ended without the Tenants moving in. Consequently the Landlord has no grounds to claim lost rental income or damages as the Landlord's Agent released the Tenants from any obligations under the tenancy agreement. As a result I dismiss the Landlord's application without leave to reapply.

With regards to the Tenants application for the return of double the pet and security deposits.

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 Tenants' testimony that they gave the Landlord a forwarding address in writing on March 24, 2017. The Landlord's Agent said they did not receive it but the Agent also said they did not receive the process server's documents on April 13, 2017. On the balance of possibilities I believe the male Tenant did personally deliver their forwarding address to the Landlord's Agent on March 24, 2017 and it is possible the Agent misplaced it. The Landlord did not repay security deposit to the Tenants within

15 days of the end of the tenancy or 15 days after receiving the Tenants' forwarding address in writing, nor did the Landlord apply for dispute resolution by April 8, 2017. Consequently I find for the Tenant and grant an order for double the pet and security deposits of \$3,400.00 each in the amount of $\$6,800.00 \times 2 = \$13,600.00$.

As the Tenant was successful in this matter; pursuant to section 38 and 67 a monetary order for \$13,600.00 has been issued to the Tenants. This Monetary order represents double the security and pet deposits in the amount of \$13,600.00.

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 \$13,600.00 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.

The Landlord's application is dismissed without leave to reapply and the Landlord is order to bear the cost of the application fee of \$100.00 which is already paid.

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: June 19, 2017.

Residential Tenancy Branch