Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ZETAN ENTERPRISES, VANCOUVER EVICTION SERVICES and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

The tenants apply to recover a $1200.00 security deposit, doubled pursuant to s. 38 of the *Residential Tenancy Act* (the *"Act"*).

The landlord(s) has brought his own application, made in September 2018 and scheduled to be heard in January 2019. That application seeks a significant amount, well in excess of the deposit money, as compensation for cleaning and repair of the rental unit. At the start of this hearing the landlord(s) requested that the January 2019 application be brought forward and heard with this application. The tenant opposed the request. I declined to bring that further dispute forward to be heard with this one as the matters are discrete issues and can be heard apart from each other. To bring the future matter forward could discriminate against the tenant being given full opportunity to answer the landlord(s) claim.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Has the tenant provided a forwarding address in writing and is the landlord subject to the doubling penalty imposed by s. 38 of the *Act*?

Background and Evidence

The rental unit is a two bedroom condominium apartment. There is a written tenancy agreement. The respondent VES is not listed as a landlord on the agreement and I consider VES to be an agent of the landlord.

The monthly rent was $2400.00. The tenants paid a $1200.00 security deposit.

In early 2018 the landlords issued a one month Notice to End Tenancy for cause. The tenant challenged the Notice and the matter was heard May 23, 2018 (related file number shown on cover page of this decision). At that hearing the parties reached a settlement to end the tenancy on May 31. The arbitrator specifically directed that the security deposit was to be dealt with in accordance with s. 38 of the *Act*.

The decision also records that the tenants provided a forwarding address at that hearing. The decision says,

> 4. Both parties agreed that the tenants provided a valid forwarding address to the landlords at this hearing and the tenant identified it as a business address where he can personally sign for and receive Residential Tenancy Branch-related documents (the address appears on the cover page of this decision);

On the cover page of the decision it reads,

> [The tenants provided a valid forwarding address to the landlords at this hearing where they can be served with RTB-related documents: #17541 – 1202 West Pender St, Vancouver, BC, V6E 2S8]

The landlord Mr. W. says he never received the decision. Ms. S.A. for the landlord VES acknowledges VES received it but says VES is not engaged in returning deposits.

The tenant Mr. S.V. says he waited until July 9 and, having not received the deposit money, brought this application.

Analysis

As of the date of this hearing, the landlord does not have the tenant's written authorization or an arbitrator's order to retain any portion of the $1200.00 security deposit. The tenant is entitled to have it back.

The question is whether or not the address recorded in the earlier decision was a forwarding address in writing within the meaning of s. 38 and so whether or not the doubling penalty in s. 38 applies. I find that it was not.

I find that the decision was received by the landlord(s) when it was received by VES in the ordinary course after the May 23 hearing and that it contained an address "in writing" for the purposes of s. 38.

However, the address described in the decision is an address qualified to be an address for delivery and receipt of "Residential Tenancy Branch-related documents" and "RTB-related documents." The return of a security deposit, by cheque or money order or cash, is not a Residential Tenancy Branch related document.

Section 38 of the *Act* imposes a penalty and so its provisions should be strictly construed. In this case I find that the address given at the May 23 hearing and recorded in the decision dated May 25 was not clearly a forwarding address to which the landlord could send deposit money or anything else that was not a Residential Tenancy Branch related document.

Conclusion

The tenants' application to recover the $1200.00 security deposit is allowed. The application for return of double the deposit is dismissed.

As the tenants have been largely successful, I award recovery of the $100.00 filing fee. The tenants will have a monetary order against the landlord P.W. in the amount of $1300.00.

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: October 16, 2018

Residential Tenancy Branch