

Decision

Dispute Codes: MNSD, FF

Introduction

This hearing dealt with an application by the tenants for return of the security deposit, and recovery of the filing fee. One of the tenants participated in the hearing and gave affirmed testimony.

Despite being served by way of registered mail with the application for dispute resolution and notice of hearing, the landlord did not appear.

Issues to be decided

- Whether the tenants are entitled to either of the above under the Act

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy was from May 1, 2009 to April 30, 2010. Rent in the amount of \$1,150.00 was payable in advance on the first day of each month. A security deposit of \$575.00 was collected at the outset of tenancy. A move-in condition inspection report was not completed.

The tenant testified that the landlord was provided with the tenants' forwarding address in writing on April 30, 2010, which is the same day the tenants vacated the unit. A move-out condition inspection report was not completed.

The tenant testified that early in the tenancy the landlord gave the tenants consent to undertake some painting in the unit, with the tenants taking responsibility for the choice of colours. However, the tenant testified that at the end of the tenancy, the landlord expressed her displeasure with the tenants' choice of colours. The tenant states that this appears to be the reason for the landlord's refusal to return the security deposit,

despite the tenant's understanding which is that new tenants took possession of the unit immediately after the end of the subject tenancy.

Analysis

The full text of the Act, regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

Section 38 of the Act speaks to **Return of security deposit and pet damage deposit**, and provides in part as follows:

38(1) 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.

Further, section 38(6) of the Act provides:

38(6) 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.

Based on the documentary evidence and the affirmed / undisputed testimony of the tenant, I find that the tenants informed the landlord in writing of their forwarding address on April 30, 2010, which is the same date the tenancy ended. Despite the tenants' request for the return of the security deposit, I find that the security deposit has not been returned. Accordingly, as the landlord has not complied with the above statutory provisions, I find the tenants are entitled to the double return of the security deposit in the amount of \$1,150.00 (2 x \$575.00).

As the tenants have succeeded in this application, I also find they are entitled to recover the \$50.00 filing fee.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$1,200.00**. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and enforced as an order of that Court.

DATE: October 1, 2010

Dispute Resolution Officer