Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the tenant for return of the security deposit and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

Background and Evidence

The tenant testified that he vacated the rental unit on September 28, 2012 but that the landlord had yet to return his security deposit to him. The tenant stated that there was some damage in the rental unit but that the damage had been there prior to the start of his tenancy and that the landlord did not compete move in or move out inspection reports. The tenant stated that he provided his forwarding address in writing to the landlord by registered mail and that the registered mail was signed for by the landlord on October 4, 2011. The tenant stated that he dealt with both the husband and wife as landlords during his tenancy.

The landlord testified that she had not returned the security deposit to the tenant as she had been out of her residence for 3 weeks and during the time that the registered mail had been sent. The landlord stated that her husband had accepted the registered mail but not opened it. The landlord stated that after she read the mail she contacted the tenant to return the security deposit but the tenant stated that it was too late and he was now seeking return of double the security deposit. The landlord maintained that as she did not receive the registered mail until 3 weeks later that she should not now be penalized for not returning the security deposit on time.

The tenant in this application is seeking $550.00 compensation in return of double the security deposit.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant has met the burden of proving that they have grounds for entitlement to a monetary order for return of double the security deposit.

Section 38(1) of the *Residential Tenancy Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the landlord received the tenant's forwarding address in writing; the landlord in this case had done neither.

Section 38(6) of the *Residential Tenancy Act* provides in part that if a landlord does not comply with his statutory obligation to return the security deposit within 15 days, the landlord must pay the tenant double the amount of the deposit.

Section 38 of the Act is very clear in its timeline for return of security deposits and does not allow for time extensions due to special circumstances. It must also be noted that both the husband and wife acted as landlords in regards to this tenancy and the husband took receipt of the registered mail which contained the tenant's forwarding address on October 4, 2011.

Accordingly I find that the tenant is entitled to a monetary order for $550.00.

As the tenant has been successful in their application the tenant is entitled to recovery of the $50.00 filing fee.

Conclusion

I find that the tenant has established a monetary claim for $550.00 in return of double the security deposit. The tenant is also entitled to recovery of the $50.00 filing fee. I grant the tenant a monetary order under section 67 for the amount of **$600.00.**

If the amount is not paid by the landlord(s), the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: January 12, 2012

Residential Tenancy Branch