Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD and FF

Introduction:

This decision was amended on April 07, 2014 to correct an inadvertent error, which I became aware of after the Tenant filed a Request for Correction on April 01, 2014. For clarity, all amendments have been underlined and highlighted in bold printing.

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on November 28, 2013 she mailed the Application for Dispute Resolution, the Notice of Hearing, and evidence the Tenant wishes to rely upon as evidence to the Landlord, via registered mail. The Tenant stated that she delivered the package, which was addressed to the Landlord at the service address on the Application, to the post office in Rossland, B.C. She stated that the Canada Post employee would not provide her with the post office box number for the Landlord but the employee told her that she would place the package in the Landlord's mail box.

The Tenant submitted Canada Post documentation which indicates that on November 28, 2013 Canada Post "attempted delivery" and that a notice card was left indicating where the item could be picked up; and that on December 31, 2013 the package was returned to the sender because it was unclaimed. On the basis of this documentation, I find that the Application for Dispute Resolution and related documents were delivered to the Landlord's mailing address. This conclusion was based on my understanding that the package would have been returned to the sender with a notation that there was "no such address" or "address incomplete" if Canada Post did not know the mailing address of the Landlord.

I therefore find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act);* however the Landlord did not appear at the hearing.

Issue(s) to be Decided:

Is the Tenant entitled to the return of the security deposit?

Background and Evidence:

The Tenant stated that the Tenant moved into the lower unit of this residential complex on **~~October 31, 2013~~ December 01, 2011**; that the Tenant moved into the upper unit of the complex on, or about, June of 2013; and that the tenancy ended on October 31, 2013.

The Tenant stated that prior to this tenancy beginning in the lower unit the Tenant paid a security deposit of $400.00 and a pet damage deposit of $400.00, and that those deposits were transferred to the upper unit when the Tenant moved into that unit.

The Tenant stated that on October 30, 2013 she provided the Landlord with a forwarding address, via email. A copy of this email and a copy of the Landlord's email response, also dated October 30, 2013, were submitted in evidence.

The Tenant stated that the Tenant did not authorize the Landlord to retain the security deposit or pet damage deposit; that the Landlord did not return any portion of the security deposit or pet damage deposit; and that she does not believe the Landlord filed an Application for Dispute Resolution claiming against the security deposit or pet damage deposit.

Analysis:

On the basis of the undisputed testimony of the Tenant and the emails submitted in evidence, I find that the Landlord received a forwarding address for the Tenant, via email, on October 30, 2013. On the basis of the undisputed testimony of the Tenant, I find that this tenancy ended on October 31, 2013.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. I find that the Landlord failed to comply with section 38(1) of the *Act,* as the Landlord has not repaid the security deposit or pet damage deposit and the Landlord has not filed an Application for Dispute Resolution within the legislated time period.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act,* the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act,* I find that the Landlord must pay the Tenant double the security deposit and pet damage deposit.

I find that the Application for Dispute Resolution has merit and that the Tenant is therefore entitled to recover the fee for filing the Application.

Conclusion:

The Tenant has established a monetary claim of $1,650.00, which is comprised of double the security deposit/pet damage deposit and $50.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court 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: March 19, 2014
Amended: April 07, 2014

Residential Tenancy Branch