

# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### **Dispute Codes:**

FF, MNSD

### **Introduction**

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

I reviewed the evidence on the case file prior to the Hearing. The parties gave affirmed evidence and this matter proceeded on its merits.

### **Issue(s) to be Decided**

This is the Tenant’s application for a Monetary Order for double the security deposit and to recover the filing fee from the Landlord.

- (1) Is there a Tenancy Agreement between the Landlord and Tenant?
- (2) Was the Landlord duly served with the Notice of Hearing package?
- (3) Is the Tenant entitled to a monetary order in the amount of \$1,950.00?

### **Background and Evidence**

The parties agreed on the following facts:

- Rent for the rental unit is \$975.00 per month, due on the first day of the month.
- The Tenant paid the Landlord \$975.00 on December 2, 2008.
- There is no written tenancy agreement between the Landlord and the Tenant.

- On December 2, 2008, the Tenant and Landlord agreed that the Tenant would move in to the rental unit on December 15, 2008.
- The rental unit is shared accommodation with the Landlord, who is not the owner of the rental unit, but rents the rental unit from another landlord.
- On December 6, 2008, the Tenant changed her mind and decided not to move in to the rental unit.

### Tenant's evidence

The Tenant testified that she mailed the Landlord the Application for Dispute Resolution together with the hearing package, by registered mail on January 7, 2009 to the address at which the Landlord carries on business. The Tenant provided a tracking number and a copy of the tracking search, which indicated that the registered mail package was not claimed by the Landlord. The Tenant testified that the Landlord picked up the package on February 26, 2009.

The Tenant testified that she met with the Landlord on December 2, 2008, to pay the security deposit for the rental unit. She stated that she expected to pay half the month's rent, but the Landlord insisted on her paying \$975.00. She testified that she paid the \$975.00, but felt uneasy about it.

The Tenant testified that on December 8, 2008, she wrote to the Landlord and advised him that she changed her mind about moving in to the rental unit on December 15, 2008, and asked for return of the \$975.00 she had paid. The Tenant testified that she provided the Landlord with her forwarding address at that time.

The Tenant testified that the Landlord did not return her \$975.00 within 15 days of December 8, 2009, and stated that she was entitled to double the \$975.00 in accordance with the provisions of the Act.

The Tenant asked for double the security deposit in the amount of \$1,950.00 and to recover the cost of the filing fee from the Landlord.

### Landlord's evidence

The Landlord testified that he picked up the hearing package on February 26, 2009.

The Landlord testified that the Tenant had agreed to move in to the rental unit effective December 15, 2008. The Landlord stated that the Tenant's payment of \$975.00 on December 2, 2008, was for half of December's rent and the balance of \$500.00 was for the security deposit.

The Landlord testified that he had pulled the ad for the rental unit before the Tenant advised him that she had changed her mind. The Landlord submitted that the Tenant therefore owed him for half of December's rent because he was not able to re-rent the apartment until January 15, 2009.

The Landlord testified that he was prepared to refund the Tenant \$500.00 for the security deposit, by two installments, via money wire, but the Tenant refused to accept payment in that fashion. The Landlord testified that he mailed the Tenant a cheque, post-dated March 13, 2009, in the amount of \$500.00.

### Analysis

#### Is there a Tenancy Agreement between the Landlord and the Tenant?

The Act defines a tenancy agreement as "an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental

unit, use of common areas and services and facilities and includes a licence to occupy a rental unit”.

The Landlord and Tenant had an oral agreement that the Tenant would pay rent to the Landlord in the amount of \$975.00 per month. The parties agreed to a move-in date of December 15, 2008, and the Landlord accepted a security deposit and ½ months rent from the Tenant on December 2, 2008. I therefore determine that there is a tenancy agreement as defined by the Act between the two parties.

Was the Landlord duly served with the Notice of Hearing package?

Section 90 of the Act provides that service of a document by registered mail is deemed to have been received 3 days after mailing the document. Therefore, the Landlord is deemed to have received the Notice of Hearing package on January 10, 2009.

Is the Tenant entitled to a monetary order for \$1,950.00?

Based on the testimony of the parties, I have determined the following:

- A security deposit can not be more than ½ half of a month's rent. I find that Tenant's payment of \$975.00 to the Landlord on December 2, 2008, was for ½ of December's rent, in the amount of \$487.50, and for the security deposit in the amount of \$487.50.
- On December 8, 2008, The Tenant advised the Landlord that she would not be moving in to the rental unit, provided her new address and requested return of the security deposit. The Landlord did not return the Tenant's security deposit within 15 days of receipt of her new address and did not apply to retain any or all of the security deposit within 15 days of receipt of the Tenant's new address.
- The Tenant did not give the Landlord a full month's written notice, as is required by the Act. The Landlord took steps to re-rent the rental unit and successfully re-rented it on January 15, 2009.

I have therefore determined that the Landlord owes the Tenant double the security deposit, or \$975.00.

I have further determined that the Tenant owes the Landlord \$487.50 for rent from January 1, 2009 to January 15, 2009.

The Tenant has been partially successful in her application and I grant the Tenant's application to recover the filing fee for the cost of the application from the Landlord.

I grant the Tenant a monetary order in the amount of \$537.50, comprised as follows:

Double the security deposit	\$975.00
Filing fee for the application	\$50.00
Less amount owing to the Landlord for ½ month rent	<u>&lt;\$487.50&gt;</u>
Balance owing by the Landlord to the Tenant	\$537.50

The Landlord testified that he mailed the Tenant cheque in the amount of \$500.00, post-dated to March 13, 2009. At the time of the hearing, the Tenant testified that she had not yet received the cheque and assured the Landlord that she would return the cheque to the Landlord, uncashed.

### **Conclusion**

I grant the Tenant a monetary order for \$537.50 against the Landlord. This order may be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

March 10, 2009

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