



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

MNSD & FF

Introduction

This hearing dealt with the tenant's application seeking a monetary claim for the return of double her security and pet deposits. I accept the tenant's oral evidence that the landlord was served with notice of this application and hearing by registered mail on April 23, 2009. I also accept the tenant's oral evidence that it was successfully delivered by Canada Post. Although the landlord was served with notice of this application and hearing by registered mail on April 24, 2009, he did not appear for the hearing. The documents are deemed to have been received by the landlord five (5) days after they were sent out pursuant to section 90(a) of the *Act*. I proceeded with the hearing in the tenant's absence.

Issues(s) to be Decided

Is the tenant entitled to the return of double her security and pet deposits plus interest?

Background and Evidence

This tenancy began on October 1, 2006 for the monthly rent of \$2,000.00 due on the 1st of each month. The tenant paid a security and pet deposit of \$2,000.00 on August 5, 2006. The tenancy was for a fixed term ending on September 30, 2007 and then reverted to a month to month tenancy. No move-in or move-out condition inspections were completed contrary to the *Act*.

The tenant gave notice in November 2008 and the tenancy ended effective December 31, 2008. The tenant submitted that she provided the landlord with a forwarding address in writing when she left it behind in the rental unit. The tenant also submitted copies of e-mail correspondence she had with the landlord during which she provided the forwarding address on November 28, 2008, January 29, 2009, and March 6th & 30th, 2009.

The tenant submits that she has received nothing from the landlord and although he initially was responding to her phone calls and e-mail correspondence, he is no longer responding.

Analysis

Section 38 of the *Act* requires that a landlord return a tenant's security deposits back within 15 days after the tenancy has ended or after receiving a forwarding address in writing.

Sections 23, 23, 35 & 36 require a landlord and tenant to participate in move-in and move-out condition inspections of the rental unit; however, the onus is not the landlord to ensure that the inspections are arranged and that the tenant is provided copies of the reports. If a landlord fails to meet these obligations then the landlord's right to the tenant's security deposit is extinguished.

I am satisfied that the landlord received the tenant's forwarding address. Although e-mail correspondence cannot always be relied upon as reliable correspondence, the evidence submitted by the tenant clearly demonstrates that she and the landlord regularly communicated through this technology. The landlord wrote an e-mail on November 28, 2008 requesting the tenant's forwarding address and the tenant responded. I am satisfied that through this venue the landlord received the tenant's forwarding address in writing as required by the *Act*.

Therefore, I find that the landlord has failed to comply with section 38(1) of the *Act* which states:

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.

If a landlord fails to comply with section 38(1) of the *Act* then section 38 (6) applies which states:

- (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



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(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The tenant's application is granted. I grant the tenant a monetary Order for the sum of **\$4,114.72** comprised of double the tenant's pet and security deposits of \$2,000.00, plus accumulated interest of \$64.72 and the recovery of the \$50.00 filing fee paid by the tenant for this application. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

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*. The tenant's application has been granted and a monetary Order for the sum of \$4,114.72 issued against the landlord due to the landlord's failure to comply with section 38 of the *Act*.

Dated: July 28, 2009.

Dispute Resolution Officer