

## **Decision**

**Dispute Codes:** MNSD

### **Introduction**

This hearing dealt with an application by the tenant for return of double the amount of the security deposit. The tenant participated in the hearing and gave affirmed testimony. The landlord did not appear.

### **Issues to be decided**

- Whether the landlord was properly served with the application for dispute resolution and notice of hearing (the “hearing package”)
- Whether the tenant is entitled to the above under the Act

### **Background and Evidence**

There is no written tenancy agreement for this month-to-month tenancy which began on or about October 1, 2009. Rent in the amount of \$650.00 was payable in advance on the first day of each month. A security deposit of \$325.00 was collected at the outset of tenancy. The tenant claims that as a result of having a friend reside temporarily with him in the unit, the landlord verbally instructed the tenant over the telephone to vacate the unit. Subsequently, the tenant vacated the unit on or about November 30, 2009. The tenant cannot recall whether he informed the landlord of his forwarding address.

The tenant testified that he served the landlord with the hearing package by leaving it in the landlord’s mail box.

### **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/](http://www.rto.gov.bc.ca/)

As to service of documents, section 89 of the Act speaks to **Special rules for certain documents**, and provides in part as follows:

89(1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71(1) *[director's orders: delivery and service of documents]*.

I find that the tenant's service of the hearing package by way of leaving it in the landlord's mail box, does not satisfy the above statutory requirements for service. Accordingly, I hereby dismiss the tenant's application with leave to reapply.

Further to the above, section 38 of the Act addresses **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.

Additionally, 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.

While there is no evidence that the tenant informed the landlord in writing of his forwarding address after the end of tenancy, the tenant still has the option of doing so.

### **Conclusion**

Pursuant to all of the above, the tenant's application is hereby dismissed with leave to reapply.

DATE: June 21, 2010

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Dispute Resolution Officer