



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, FF

Introduction

This matter dealt with an application by the Tenant for the return of a security deposit plus compensation equal to the amount of the deposit due to the Landlord's failure to return it within the time limits required under the Act as well as to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on May 31, 2010 to the Landlord's residence but it was returned to her unclaimed. Section 90 of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later even if they refuse to pick up the mail. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord's absence.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of her security deposit and if so, how much?

Background and Evidence

This fixed term tenancy started on February 15, 2009 and was to expire on February 15, 2010 but ended on January 31, 2010 when the Tenant moved out. The Tenant said the Landlord asked her to move out at that time because he was selling the rental property. Rent was \$835.00 per month. The Tenant paid a security deposit of \$420.00 at the beginning of the tenancy.

The Tenant said she sent her forwarding address in writing to the Landlord by registered mail to his residence on April 6, 2010 and according to the Canada Post online tracking system, he received it on April 23, 2010. The Tenant said the Landlord has not returned her security deposit and she did not give him written authorization to keep it.



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Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

I find that the Landlord received the Tenant's forwarding address in writing on April 23, 2010 but did not return her security deposit of \$420.00. I also find that the Landlord did not have the Tenant's written authorization to keep the security deposit and did not make an application for dispute resolution to make a claim against the deposit. As a result, I find that pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit or \$840.00. I also find that the Tenant is entitled pursuant to s. 72 of the Act to recover the \$50.00 filing fee for this proceeding from the Landlord.

Conclusion

A monetary order in the amount of **\$890.00** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, 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: October 18, 2010.

Dispute Resolution Officer