



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD

Introduction

This is the Tenants' application for return of the security deposit from the Landlords.

The Tenant gave affirmed testimony at the Hearing.

The Tenant testified that she mailed the Notice of Hearing, by Purolator, to the Landlords at their residence on October 8, 2010. The Tenant testified that the documents were returned to her, unclaimed, on October 20, 2010. The Tenants provided a copy of the tracking printout in evidence.

The Tenant testified that she mailed the Notice of Hearing documents again, by registered mail, to the Landlords at their residence on October 21, 2010. The Tenant provided the tracking number for the registered mail documents. A copy of the Canada Post Tracking sheet was provided in evidence, which indicates that an attempt to deliver the documents was made on October 22, 2010. A Notice was left indicating where the package could be picked up. On November 4, 2010, a Final Notice was left at the Landlords' address indicating where the package could be picked up.

I am satisfied that the Tenants served the Landlords with the Notice of Hearing documents in accordance with the provisions of Section 89(1)(c) of the Act, by registered mail sent October 22, 2010. Service of documents in this manner is deemed to be effected 5 days after the documents are mailed, whether or not the recipient

chooses to accept delivery. The Landlords did not sign into the teleconference and the Hearing continued in their absence.

Issue(s) to be Decided

- (1) Are the Tenants entitled to return of the security deposit?

Background and Evidence

The Tenant KS gave the following testimony:

The rental unit is a suite in a house. The Landlords live in the other portion of the house.

There was no written tenancy agreement. The Tenants moved into the rental unit on September 15, 2009. Monthly rent was \$800.00. At the beginning of the tenancy, the Landlords did not require a security deposit. On October 1 2009, when the Tenant paid rent to the Landlords, they were told that they had to pay a security deposit in the amount of \$400.00. The Tenants paid the security deposit in cash on October 9, 2010.

The Tenants moved out of the rental unit on August 15, 2009, and asked about the security deposit. The Landlords told them they had to clean the carpets, so they did. The Tenants left the keys on the kitchen counter, along with a note including their forwarding address. The Landlords did not ask to perform a move-out inspection with the Tenants.

The Tenants heard nothing from the Landlords about the security deposit, so the Tenants began phoning them, but were unsuccessful. On September 10, 2010, the Tenants sent the Landlords a letter including their forwarding address, phone number and e-mail address, requesting return of their security deposit.

The Landlords have not returned any of their security deposit. The Tenants did not agree that the Landlords could retain any of the security deposit.

Analysis

Section 38(1) of the Act provides 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** repay any security deposit to the Tenant, or make an application for dispute resolution claiming against the security deposit.

Section 38(6) of the Act provides that if a Landlord does not comply with Section 38(1) of the Act, the Landlord **must** pay the Tenant double the amount of the security deposit.

I find that the Tenants provided the Landlords with their forwarding address in writing on September 15, 2010 (5 days after sending the letter). Based on the Tenant's affirmed testimony, and in the absence of any evidence from the Landlords, I find that the Tenants are entitled to double the amount of the security deposit, pursuant to the provisions of Section 38(6) of the Act.

Conclusion

Pursuant to the provisions of Section 38(6) of the Act, I hereby provide the Tenants with a monetary order for \$800.00 against the Landlords. This order must be served on the Landlords and may be filed in the Provincial Court of British Columbia (Small Claims) 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: November 19, 2010.
