



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and his advocate only. The landlord did not attend.

The tenant testified that prior to the end of the tenancy he knew the landlord lived in an urban centre in the northern interior of BC and through a land title search he obtained an address for a property owned by the landlord in that community.

The tenant has provided copies of registered mail tracking print outs from Canada Post for two letters/packages. One package was mailed to the landlord on July 8, 2010 and included the notice of hearing documents and some evidence and another package was mailed November 5, 2010 and included additional evidence.

Both packages were returned to the tenant. The July 8, 2010 package was returned as unclaimed and the November 5, 2010 package was returned as it was refused by the recipient. On the printouts for both packages Canada Post indicates the delivery was attempted at the address on the envelope and then "redirected to recipient's new address".

The tenant also testified that the landlord had never provided him with a service address throughout the tenancy and that he only had the landlord's agent's phone number that is no longer in service. The tenant also noted the phone number he had for the landlord is also no longer in service.

Section 89 of the *Residential Tenancy Act (Act)* requires a party making an Application for Dispute Resolution to serve the other party with the notice of hearing documents and evidence by, among other methods, 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.

As the tenant has been able to obtain an address for the landlord, that appears to be a different address than where the landlord lives, both of the registered mail packages sent to that address were "redirected to recipient's new address" I find that although the

tenant has not served the document in accordance with Section 89 and despite the landlords refusal to accept the registered mail the tenant has provided sufficient evidence to confirm that the landlord has been served sufficiently for the purposes of this *Act*, pursuant to Section 71(2)(c).

Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for double the amount of the security deposit, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The tenancy began in February 2009 as a month to month tenancy for a monthly rent of \$750.00 due on the 1st of each month with a security deposit of \$375.00 paid. The tenancy ended in September 2009.

The tenant testified that he spoke with the landlord by phone in December 2009 and provided him with his forwarding address and that the landlord had told him he would return the security deposit forthwith.

When the tenant did not receive the security deposit he send the landlord his forwarding address in writing to the address he found, as per the notes above in the introduction. The tenant forwarded his address via registered mail on May 6, 2010. As the letter was unclaimed it was returned to the tenant.

Analysis

Section 38(1) of the *Act* stipulates a landlord must return, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, the security deposit less any mutually agreed upon deductions, or to file an Application for Dispute Resolution to claim against the security deposit.

I accept the tenant's testimony that he informed the landlord verbally in December 2009 of his forwarding address. I also accept the tenant tried to provide his forwarding address in writing to the landlord in his May 6, 2010 registered mail to the landlord that was unclaimed by the landlord.

I find the landlord's actions of not claiming this registered mail and refusing the additional registered mail sent by the tenant is the landlord's attempt to contravene Section 5 of the *Act*. Section 5 stipulates that landlords and tenants may not avoid the *Act* and any attempt to avoid the *Act* is of no effect. And as a result, I find the landlord has failed to comply with Section 38(1).

As such, I find the tenant has fulfilled all requirements for return of his security deposit and that the landlord has no authority to unilaterally retain the security deposit. Section

38 (6) of the Act states that should the landlord fail to comply with Section 38 (1) he must pay the tenant double the security deposit.

Conclusion

I find that the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$750.00** comprised of double the amount of the security deposit.

This order must be served on the landlord and may be filed in the Provincial Court (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.

Dispute Resolution Officer